

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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STEPHEN KERSHNAR,

Plaintiff,

1:23-CV-525 (LJV)

vs.

STEPHEN H. KOLISON, JR., in his  
individual capacity and his  
official capacity as the President  
of the State University of  
New York at Fredonia,

Buffalo, New York  
September 28, 2023  
9:16 a.m.

and

DAVID STARRETT, in his individual  
capacity and his official capacity  
as Executive Vice President and  
Provost of the State University of  
New York at Fredonia,

Defendants.

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**EVIDENTIARY HEARING - VOLUME III**

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE LAWRENCE J. VILARDO  
UNITED STATES DISTRICT JUDGE

TRANSCRIBER: Diane S. Martens  
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(Proceedings recorded by electronic audio recording,  
transcript produced by computer.)

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Kershner v. Kolison, et al - 23-CV-525

P R O C E E D I N G S

\* \* \*

**THE CLERK:** 23-CV-525, Kershner v. Kolison, et al.

Attorneys Barry Covert, Joshua Bleisch, Robert  
Corn-Revere and Kelley Bregenzer, and paralegal Megan  
Commarrato appearing on behalf of the plaintiff.

Assistant Attorney General Jennifer Kimura, Alyssa  
Pantzer and Christopher Boyd. Chief campus counsel for SUNY,  
Kristin Wheaton appearing on behalf of defendants.

This is the continuation of the evidentiary hearing.

**THE COURT:** Okay. Good morning, everybody.

(Counsel say good morning.

**THE COURT:** So I think where we left off, I told the  
defendants that I was going to give them a chance to call any  
other witnesses that they wanted to call.

Do you have anyone else you want to call?

**MS. PANTZER:** No, your Honor.

**THE COURT:** Okay. But you do have an affidavit that you  
would like me to consider?

**MS. PANTZER:** Yes, your Honor.

**THE COURT:** And the plaintiffs have indicated that they  
are going to object to that.

**MR. COVERT:** Well, your Honor, we are. We thought that  
the defendants were asking for a factual hearing so that we

Kershner v. Kolison, et al - 23-CV-525

1 can have live testimony from witnesses as opposed to  
2 declarations. Obviously we leave that to the discretion of  
3 the Court.

4 If the Court is inclined to accept the declaration, we  
5 will likely seek some time for a rebuttal, a rebuttal  
6 declaration as to that, perhaps seven or ten days after we  
7 close the hearing so we can make that determination. To be  
8 very honest, we're getting ready -- busy getting prepared for  
9 this and we haven't thought that through.

10 **THE COURT:** But your only objection is that you want  
11 live testimony?

12 **MR. COVERT:** Yeah.

13 **THE COURT:** Okay. Well, I'm going -- I'll admit the  
14 declaration. I mean, again, this is a preliminary injunction  
15 hearing. The defendants have submitted some law that  
16 indicates that this sort of submission is often considered in  
17 preliminary injunction hearings and I see no reason not to  
18 consider it.

19 Obviously I think I know how to view written materials  
20 as opposed to testimony and I will view it that way but I see  
21 no reason not to admit it.

22 So, as long as you have no other objection to it, other  
23 than the fact that it's written and not live.

24 **MR. COVERT:** Yeah, not -- as long as we're able to, as I  
25 indicated, provide rebuttal declarations if we see fit. We

Kershner v. Kolison, et al - 23-CV-525

1 don't -- just to have a period of time after the close of the  
2 hearing to do that.

3 **THE COURT:** Any problem with that from the defense?

4 **MR. BOYD:** No. I mean, I think your Honor has  
5 contemplated post-hearing briefing on this.

6 **THE COURT:** Absolutely.

7 **MR. BOYD:** So I assume we'll all have things to say  
8 about what everyone had to say during testimony.

9 **THE COURT:** Yes, I think that that's probably right, so  
10 yes. But what we'll do is if the plaintiffs want time to  
11 submit some sort of evidentiary declaration before the  
12 briefing on the law even begins, we'll give them a chance to  
13 submit that and then the briefing on the law will begin.

14 **MR. BOYD:** And just so I'm clear, is that going to come  
15 from plaintiff's current expert, a third-party or --

16 **THE COURT:** I think they don't know because they haven't  
17 thought through it yet.

18 **MR. COVERT:** Judge is speaking for us very well.

19 **MR. BOYD:** That's, that's fine, your Honor. Obviously  
20 after we see that, we may have some other things to say.

21 **THE COURT:** Of course. No, look it. I get it. I get  
22 it. But I just want to make sure there's no objection in  
23 principle to what they are suggesting. Okay.

24 So, the defendants are finished?

25 **MS. PANTZER:** Yes, your Honor.

Kershner v. Kolison, et al - 23-CV-525

1       **THE COURT:** And the plaintiffs have some witnesses they  
2 want to call?

3       **MR. COVERT:** Yes, we do, your Honor.

4       **THE COURT:** And let me just get a sense from you of  
5 where we're going today, how long it's going to take and all.  
6 How many witnesses do you have?

7       **MR. COVERT:** Two witnesses.

8       **THE COURT:** And how long do we think it's going to take?

9       **MR. COVERT:** I think we'll be done today. I don't know  
10 exactly how long. I would anticipate that we will first call  
11 Tony Olivo, that will take, between direct and cross, it  
12 could be most of the morning. I don't know whether we'll  
13 make it to Mr. Wilson. Then he will testify and we don't  
14 expect him to be as long. So it really just depends on how  
15 long the cross-examination is.

16       I would note that the defendants submitted a amended  
17 exhibit list and so that would lead me to believe that  
18 there's going to be some protracted cross-examination of our  
19 witnesses and that's just my --

20       **THE COURT:** Okay.

21       **MR. COVERT:** -- observation.

22       **THE COURT:** We'll do what we have to do.

23       **MR. COVERT:** Yeah.

24       **THE COURT:** Just for planning purposes, I have another  
25 matter at 1:00 and so we're going to break, probably, at noon

Olivo - Direct - Covert

1 so I can prepare for that and probably come back around 1:30,  
2 2 o'clock.

3 **MR. COVERT:** I still think we'll be done today.

4 **THE COURT:** Okay.

5 **MR. COVERT:** I, I would think --

6 **THE COURT:** We'll probably take a longer break for lunch  
7 than we usually do because I do have another matter that I  
8 have to handle.

9 **MR. COVERT:** Very good.

10 **THE COURT:** Okay. So you may call your first witness.

11 **MR. COVERT:** Thank you, your Honor.

12 We'll call Tony Olivo.

13 (WHEREUPON, discussion was held off the record.)

14 **THE COURT:** Okay. Go ahead.

15

16 **JAMES ANTHONY OLIVO**, called as a witness, being duly  
17 sworn, testified as follows:

18 **DIRECT EXAMINATION BY MR. COVERT:**

19 **Q** Good morning, Mr. Olivo.

20 **A** Good morning.

21 **Q** Can you talk into the microphone, please. You can  
22 pull it closer.

23 **THE COURT:** Yeah, we want to make sure we speak into the  
24 microphone now, especially because of the issues we have with  
25 the court reporter.

Olivo - Direct - Covert

1           So go ahead.

2           **MR. COVERT:** Yes, thank you.

3           **Q**     Mr. Olivo, can you tell the Court where your  
4     current business is located and what the nature of the  
5     business is.

6           **A**     I am the president and director of Investigative  
7     Services for Corporate Screening and Investigative Group, CSI  
8     Group for short. We are located in Orchard Park, New York.

9           **Q**     And how long have you been a private investigator?

10          **A**     Licensed in New York State for 28 years.

11          **Q**     And can you just get into some of your background,  
12     for example, where you went to college and what courses you  
13     took, what your majors were?

14          **A**     I have a degree from the University of Hawaii  
15     through the Community College of the Air Force in criminal  
16     justice. I have a degree in Public Administration from  
17     Capital University in Columbus, Ohio.

18          **Q**     And do you have a law enforcement background?

19          **A**     Yes. I began my law enforcement career in 1979.

20          **Q**     And can you describe that to the Court?

21          **A**     Began my law enforcement career in 1979 in the  
22     United States Air Force as what at that time was called the  
23     Law Enforcement Specialist. I was a law enforcement  
24     supervisor, criminal investigator, and a SWAT team member.

25          **Q**     And how long were you in the Air Force?



Olivo - Direct - Covert

1           A       Six years on active duty and nine years on reserve  
2 duty.

3           Q       And then after the Air Force, what did you do?

4           A       I became a police officer and police detective in  
5 Cheyenne, Wyoming.

6           Q       And what were your job duties in Cheyenne as a  
7 police and detective?

8           A       I was a child abuse and sex crimes detective. I  
9 was a hostage negotiator. And I worked in the detective  
10 division of the Cheyenne Police Department.

11          Q       And did that -- was there any federal component to  
12 that job?

13          A       We often supplemented the United States Secret  
14 Service, the Office of Special Investigations for the  
15 U.S. Air Force and Protective Details. I was actually on the  
16 protective detail assigned to George Bush the First when he  
17 came to Cheyenne and, also, Caspar Weinberger, the former  
18 Secretary of Defense.

19          Q       And when you were on those details, what did that  
20 require you to do?

21          A       To supplement the Secret Service in their  
22 protective details to provide executive protection, services,  
23 escort services and those type of protection assignments as  
24 given to us by the Secret Service.

25          Q       And then after you left the Cheyenne, Wyoming

Olivo - Direct - Covert

1 Police Department, what did you do after that?

2 A I joined the United States Marshal Service where I  
3 initially served in the Southern District of New York as a  
4 member of the United States Marshal service. I was on the  
5 Caribbean Drug Gang Task Force for a few years and then I was  
6 also a member of the U.S. Marshal Special Operations Group  
7 which is like our SWAT unit which would be analogous to the  
8 FBI's Hostage Rescue Team.

9 Q And were you involved in any risk assessments or  
10 threat assessments while you were a U.S. Marshal, and can you  
11 describe that to Court?

12 A We conducted high risk and high threat transports  
13 of prisoners such as the individual that was accused of  
14 killing DEA agent Kiki Camarena on the southern border.

15 We protected the Supreme Court Justices. I  
16 personally ran the details of Justice Sandra Day O'Connor,  
17 Justice Antonin Scalia and Justice Harry Blackmun when they  
18 were in Cleveland, Ohio where I was stationed.

19 We also conducted extractions of Manuel Noriega  
20 from Panama and high risk threat and prisoner movements. We  
21 supplemented the Secret Service and the U.S. State Department  
22 on the UN security details in New York City for the General  
23 Assembly meetings. So I was on the planning teams of all of  
24 those high risk and high threat movements.

25 Q And did those duties involve threat assessments?

Olivo - Direct - Covert

1           A     Yes. They involved physical and tactical threat  
2 assessments which was part of my duties.

3           Q     And how would you conduct those assessments or how  
4 would you utilize those?

5           A     In conjunction with the intelligence acts that we  
6 worked with, we would assess if there was any known or  
7 potential threat, imminent threat and then address the  
8 movements and the protection accordingly.

9           Q     And after -- how long were you in the U.S. Marshal  
10 Service?

11          A     Seven years.

12          Q     And then what -- and were there any other matters  
13 that you were involved with that were of notoriety while you  
14 were with the Marshals?

15          A     Other than the ones that I just mentioned, many,  
16 many movements of high threat and high risk prisoners,  
17 protection of federal witnesses, federal judiciary.

18          Q     And were you involved at the extraction of various  
19 federal officials from foreign countries?

20          A     That was when I was in the Air Force, yes.

21          Q     Okay.

22          A     In Grenada.

23          Q     I'm sorry. So that was in the Air Force?

24          A     Yes.

25          Q     And what did you do with respect to that?

Olivo - Direct - Covert

1           A       We extracted the General assigned to Grenada at the  
2 time.

3           Q       Because there was a risk assessment and threat  
4 assessment in --

5           A       Well --

6           Q       -- relation to --

7           A       There was an armed conflict going on in Grenada so,  
8 yes, there was a potential threat.

9           Q       Okay. Then after you left the U.S. Marshal  
10 Service, what did you do then?

11          A       I formed the company that I currently preside over.

12          Q       And what are your functions with that company and  
13 what does the company do in relation to threat assessments or  
14 safety on college campuses or high school campuses?

15          A       We specialize in working with school districts,  
16 health care organizations, hospitals and high risk  
17 organizations to provide risk and threat assessments and  
18 security system design, security consulting and, if need be,  
19 coordinate protection for anyone that might need it in case  
20 of a threat.

21          Q       And who do you do that for?

22          A       70 different school districts throughout New York  
23 State. 4 different BOCES, which is B-O-C-E-S; it's the Board  
24 of Cooperative Educational Services -- that are dispersed  
25 throughout New York State. And underneath each BOCES,

Olivo - Direct - Covert

1 there's anywhere from 50 to 100 different school districts  
2 that they're responsible for providing services for. So our  
3 firm works with all of those different BOCES and their  
4 component school districts to provide those services.

5 Q And if you can get into a little more detail as to  
6 what services you provide in relation to the security -- I'm  
7 going to call it capacity, whether it's a high school or a  
8 college, but what type of services do you provide for the  
9 security of the campus?

10 A So, with each school district that we work with and  
11 consult with, we provide a detailed, what we call, risk and  
12 threat assessment for each district. It's a three-component  
13 assessment that consists of:

14 Number one, interviewing and reviewing their  
15 policies and procedures. So, every district is pretty much  
16 different. There's no real consistency with respect to how  
17 each school district operates. So we review comprehensively  
18 their policies and procedures with respect to how they  
19 respond to a threat, when they would lock down a school, when  
20 they would call in a lockout, shelter in place, all of those  
21 things, visitor access control, all of that.

22 The second component is what we call covert  
23 observations and penetration test. During this period, we  
24 would send undercover operatives to the campus to see if they  
25 could identify potential risk areas and, if so, exploit those

Olivo - Direct - Covert

1 areas in such a way where they're unnoticed. For instance,  
2 we have had operatives walk into school districts and sit  
3 down in the kindergarten classroom and have breakfast with  
4 kindergarteners during the day with nobody noticing them. So  
5 that's the second phase.

6 And then the third phase of our risk and threat  
7 assessment would be a physical assessment. At this point we  
8 would look at all of their camera systems, alarm systems,  
9 lockdown mechanisms, panic buttons, door locks, all of the  
10 physical components that go into securing a campus.

11 Q And you said you did that in relation to 70  
12 K through 12 schools, correct?

13 A Correct.

14 Q And you performed all of those analysis -- those  
15 three levels of analysis for those schools?

16 A Correct.

17 Q And then, also, have you done that for universities  
18 and can you identify some of universities that you provide  
19 that for, unless it's confidential?

20 A We have consulted with several universities, one of  
21 which would be locally would be D'Youville College.

22 Q And what did you do for them?

23 A We consulted with them on enhancing their security  
24 of their campus and gave them various methodologies to do  
25 that.

Olivo - Direct - Covert

1           Q     And what exactly did you look at? What was the  
2 concern and what was your advice?

3           A     At that time we actually looked at their physical  
4 security issues and their locking systems. We just  
5 recently -- well, I say recently -- prior to COVID, we did  
6 the same thing for Roswell Park Cancer Institute.

7           Q     So you also do this for health care providers?

8           A     Yes.

9           Q     And about how many different health care providers  
10 have you done that for and if you could name some of them?

11          A     We've done it for Olean General Hospital in all of  
12 their component care facilities. We've done it for Bradford  
13 Regional Medical Center and all of their components. We've  
14 worked with the -- actually the State Police consulting with  
15 Catholic Health, as well. And Roswell Park.

16          Q     And are any health care providers out of the area?

17          A     No.

18          Q     Okay. Not for the Cleveland Clinic?

19          A     We have worked with the Cleveland Clinic but we  
20 didn't do any physical work with the Cleveland Clinic. We've  
21 consulted with them and their police department --

22          Q     Okay.

23          A     -- but we didn't do any physical --

24          Q     And when you say --

25          A     -- upgrades.

Olivo - Direct - Covert

1           Q     The physical work that you did with the other  
2 health care providers, the local ones, was that similar to  
3 the three-prong analysis that you provided to the K through  
4 12 schools?

5           A     With respect to Olean General Hospital and Bradford  
6 Regional Medical Center, yes, they engaged us to do the  
7 entire process. Roswell Park was more of a physical  
8 component where we looked at their locking mechanisms and  
9 made suggestions as to how they could upgrade them in certain  
10 areas and all of those type of things. Catholic Health was  
11 more training for situational awareness and active shooter  
12 training.

13          Q     And in relation to all of the campuses, including  
14 the health care providers, these all include threat  
15 assessments as to the dangers that could be caused by  
16 outsiders coming on to those campuses?

17          A     Yes. To a certain extent we would conduct a threat  
18 assessment with respect to any known threats that they have  
19 had, anything that has been communicated to them via email,  
20 voicemail, social media, any problems that they've had with  
21 local, whether it be parents or anyone else in the community  
22 that have had issues with the campus itself.

23          Q     And would you advise them as to how to handle those  
24 situations?

25          A     Yes, absolutely. For instance, in a health care



Olivo - Direct - Covert

1 environment, it's very problematic when various surgeons have  
2 their names in parking spaces physically marked. We have had  
3 actual surgeons who have lost patients on the table where  
4 they were followed home and had threats made to them and  
5 those type of things. So we've actually consulted with them  
6 and said how to mitigate those problems and get rid of them.

7 **Q** Now, in addition to being a private investigator,  
8 do you have any certifications or licenses currently that you  
9 hold in relation to that field?

10 **A** Yes. I am a New York State Licensed Private  
11 Investigator, a Florida State Licensed Private Investigator.  
12 I'm a Board Certified Professional Criminal Investigator and  
13 a Certified International Investigator. I'm also a member of  
14 the Association of Threat Assessment Professionals.

15 **Q** And what certifications do you have in relation to  
16 school security?

17 **A** I am a TASA certified expert in school security and  
18 negligence security.

19 **MR. COVERT:** Your Honor, I would offer Mr. Olivo as an  
20 expert on threat assessment and campus safety including  
21 threat assessments on campuses.

22 **MS. PANTZER:** Your Honor, I have -- I have a two-pronged  
23 objection to that qualification. First, I don't think  
24 Mr. Ol -- Olivo.

25 **THE WITNESS:** Olivo, yes.

Olivo - Direct - Covert

1           **MS. PANTZER:** -- has offered any testimony as to his  
2 expertise on behavioral threat analysis. In fact, his report  
3 doesn't mention anything about behavioral threat analysis.

4           Additionally, Mr. Olivo has only testified that he  
5 helped secure D'Youville's campus. I do not think that  
6 qualifies him as an expert on campus security. I think that  
7 there's a hole in the qualification there, as well.

8           **THE COURT:** Do you --

9           **MR. COVERT:** We're --

10          **THE COURT:** -- want to ask any --

11          **MR. COVERT:** -- not offering him as a --

12          **THE COURT:** -- questions?

13          **MR. COVERT:** -- behavioral -- what was the phrase you  
14 used?

15          **MS. PANTZER:** Behavioral threat analyst.

16          **THE COURT:** What does that mean?

17          **MS. PANTZER:** Well, your Honor, Chief Isaacson offered  
18 lots of testimony about his ability to analyze potential  
19 threat actors based on behavioral leakage and potential for,  
20 potential for violence based on a behavioral analysis.

21          Mr. Olivo has offered testimony that he understands the  
22 physical and tactical elements of threat assessment but I  
23 don't think he's offered any testimony as to behavioral  
24 analysis.

25          **MR. COVERT:** Your Honor, Mr. Isaacson was not offered as

Olivo - Direct - Covert

1 a behavioral threat analyst. I would read from day one of  
2 the testimony, Page 26, quote:

3 "Your Honor, we would offer Chief Isaacson as an expert  
4 in threat assessment, as well as campus law enforcement and  
5 safety."

6 We are doing the same with Mr. Olivo who testified that  
7 he's provided threat assessments in a three-prong manner to  
8 75 different school districts, to 5 universities, and various  
9 health care providers. We are offering him for exactly what  
10 I said. I never used the word "behavioral" in what I asked  
11 him to be permitted as an expert upon.

12 **MS. PANTZER:** Your Honor, I maintain the objection. I  
13 understand that Mr. -- Chief Isaacson was offered as a expert  
14 in threat assessment. I will maintain the objection that I  
15 think Mr. Olivo is not an expert as to behavioral analysis,  
16 and to the extent he's not being offered for that purpose,  
17 that's fine.

18 I also maintain the objection that I don't think Mr.  
19 Olivo has established expertise as to university and campus  
20 security the way that Chief Isaacson did.

21 **THE COURT:** You said 5, is that what you testified to?

22 **MR. COVERT:** 5 universities. 75 K through 12 campuses,  
23 5 university campuses and various health care provider  
24 campuses, as well.

25 **THE COURT:** Is that accurate, sir?

Olivo - Direct - Covert

1       **THE WITNESS:** Yes.

2       **THE COURT:** I'll allow him to testify.

3       **MR. COVERT:** Thank you, your Honor.

4       **Q**     Now at some point you have been retained by FIRE,  
5 F-I-R-E being the Foundation for Individual Rights and  
6 Expression, to provide your expertise services in threat  
7 assessments and threat assessments particularly in relation  
8 to campuses, whether it's K through 12 or universities,  
9 correct?

10      **A**     Correct.

11      **Q**     And what have you -- what is your retainer, what  
12 are you charging for that?

13      **A**     There was no retainer obtained. Our rates are \$150  
14 an hour.

15      **Q**     Okay. And in relation to performing that function  
16 as an expert, what did you review to prepare both your expert  
17 report and to prepare for testifying here today?

18      **A**     I reviewed a declaration by Chief Isaacson. I  
19 reviewed emails that were provided to me and other  
20 documentation that FIRE provided, as well.

21      **Q**     Were you provided roughly 5500 document -- pages of  
22 documents from the Attorney General's Office that was  
23 provided -- that they provided to the plaintiff's counsel?

24      **A**     Yes.

25      **Q**     And have you reviewed all of those materials?

Olivo - Direct - Covert

1 A No, I did not.

2 Q Have you reviewed the materials that we forwarded  
3 to you as relevant?

4 A Yes.

5 Q And in Plaintiff's Exhibit 98 -- which is not in  
6 evidence at this time, your Honor -- would you recognize that  
7 as your expert rebuttal report?

8 A That looks like it, yes.

9 Q And on Page 21, I believe, of the report is your  
10 signature. Would you recognize that --

11 A Yes, that is my --

12 Q -- as --

13 A -- signature.

14 Q And the second attachment to that report lists 75  
15 documents that you indicated you reviewed in relation to  
16 providing testimony here today?

17 A Yes, that's correct.

18 Q And that attachment number two is correct in  
19 relation to those documents that you reviewed to prepare for  
20 today?

21 A Yes.

22 Q Were you present during the hearings that occurred  
23 earlier this month?

24 A I was.

25 Q Two days of hearings on September 13th and 14th,

Olivo - Direct - Covert

1 primarily the testimony of Mr. Brent Isaacson, correct?

2 A Yes.

3 Q And you were here to observe all of that?

4 A Yes.

5 Q And were you able to also review the transcript of  
6 his testimony after it was provided to the plaintiff's team?

7 A Yes, I was.

8 Q So you have reviewed documents pertaining to what  
9 we'll call the Stephen Kershnar controversy, correct?

10 A Yes.

11 Q And how would you describe the initial round of  
12 documents that you reviewed, as well as Mr. Isaacson's  
13 testimony, in relation to what occurred once the campus was  
14 alerted to the controversy on February 2nd, of 2022?

15 A There was various communications made by people,  
16 known or unknown to the campus, regarding their displeasure  
17 with Professor Isaacson's podcast. And as a result that,  
18 Chief Isaacson engaged another firm to do a risk and threat  
19 assessment, or a threat assessment. He also conducted an  
20 analysis on the threat assessment and made some conclusions.

21 Q So on February 2nd, 2022, is when he -- the campus  
22 first became aware of, and alerted to, the Kershnar  
23 controversy, correct?

24 A Correct.

25 Q And you have reviewed the documents provided to you

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1 in relation to the emails that were shared within the campus  
2 community?

3 A Yes.

4 Q Including those from Mr. Isaacson?

5 A Yes, and various other administrators of the  
6 campus.

7 Q And you also observed it and listened to his  
8 testimony earlier this month, correct?

9 A Yes, I did.

10 Q Did, in your opinion, did Mr. Isaacson take steps  
11 on February 2nd, or even shortly thereafter, that would be  
12 indicative of a belief that there is a heightened concern for  
13 violence on the campus?

14 A I saw no evidence that they enhanced security  
15 measures on the campus.

16 Q And we're talking about the period of February 2nd  
17 and shortly thereafter?

18 A Correct.

19 Q What, what measures, from what you observed in the  
20 documents you reviewed, or listened to of Mr. Isaacson, what  
21 measures did they take in the days following February 2nd,  
22 2022?

23 A I believe that, in coordination with their  
24 personnel administrators, HR people, they removed professor  
25 Isaacson from campus.

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1           Q     And in your -- were you -- in your opinion, did you  
2 observe any basis to believe that they looked at any  
3 alternatives other than removing him from the campus on  
4 February 2nd or within the days or weeks thereafter?

5           A     Not that I have seen.

6           Q     And if you were in charge of campus security, would  
7 you have engaged in such an assessment as to whether there  
8 are alternatives to removing him from the campus during that  
9 time period?

10          A     I would have looked at any alternative, yes.

11          Q     And what types of alternatives would you look at?

12          A     Given the information that would have been  
13 available at the time, I would have looked at enhancing  
14 security measures around his workspace. So Chief Isaacson  
15 testified previously about walking the academic buildings on  
16 the campus to be that similar to a K through 12 building. I  
17 would agree with that. However, I didn't see any evidence of  
18 that, other than the fact that they added locking mechanisms  
19 to the classroom doors, enhanced locking mechanisms to the  
20 classroom doors.

21                 So to bring Mr. Kershner back on to campus, I would  
22 have looked at various measures such as security exterior  
23 doors to that academic building which they would have had the  
24 ability to do either through a mechanical or an electronic  
25 lock system. They have over 300 cameras on the campus which



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1 they could have also enhanced monitoring. They could have  
2 added additional patrols, and/or one of their officers or a  
3 off-duty officer from the sheriff's department or the local  
4 police department, to escort Mr. Kershner to and from his  
5 workspace.

6 Q And did you find any evidence that they either  
7 reviewed those options or implemented those options?

8 A Not that I saw.

9 Q And in the time period from a few weeks -- from  
10 February 2nd and a few weeks thereafter, did they implement  
11 any heightened security for campus officials, their staff or  
12 students on campus from what you observed?

13 A The only information I observed or reviewed was a  
14 heightened awareness regarding Mr. Kolison.

15 Q And what was -- what did you observe in February as  
16 opposed to March -- in February, what was the evidence of any  
17 heightened concern for Mr. Kolison?

18 A There was none.

19 Q And the heightened concern you're talking about is  
20 on March 25th --

21 A Correct.

22 Q -- and the measures? But in February were any  
23 additional measures taken based upon your listening to the  
24 testimony of Mr. Isaacson or the review of documents which  
25 would indicate that there was any increase in security of

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1 Mr. Kolison or his staff or anyone located in this building  
2 in early February of 2022?

3 A No, I didn't see any evidence of that.

4 Q And, again, the measures that you talked about that  
5 were alternative measures, would also have been available for  
6 them to implement in relation to President Kolison, his staff  
7 and the students in the area, correct?

8 A The entire campus would have -- those measures  
9 could have been implemented for the entire campus.

10 Q And did you also review documents pertaining to a  
11 protest or parade that occurred on February 6th of 2022?

12 A I reviewed emails, yes.

13 Q Okay. And it's fair to state that the first emails  
14 reviewed, that were circulating regarding the upcoming  
15 February 6th, 2022, protest were circulated on or about  
16 February 3rd of 2022?

17 A Correct. It was a march that they were calling  
18 for.

19 Q And that was a march that was going to commence off  
20 campus and come on campus, correct?

21 A Correct.

22 Q And this was going to be students and there's also  
23 documents in the file indicating that the campus officials  
24 were alerted to the possibility of nonstudents coming from  
25 off campus as part of this protest, correct?

Olivo - Direct - Covert

1 A Correct.

2 Q And what measures are you aware of that  
3 Mr. Isaacson or campus security took in relation to any  
4 potential increase in threats based upon that protest?

5 A I see no documents relating to it but Chief  
6 Isaacson did indicate during his testimony that they added an  
7 additional patrol car to the campus.

8 Q And are there different levels of threat responses  
9 that you can implement on any given campus?

10 A Yes.

11 Q And how would you characterize that level of  
12 response to the protest from students and nonstudents that  
13 were coming from off campus on to campus on February 6th?

14 A Very minimal. Minimal at best.

15 Q What were the alternatives if they -- if  
16 Mr. Isaacson thought that that actually was a threat to the  
17 campus, what alternative measures could he have taken in  
18 relation to the protest if he felt there was any danger to  
19 the campus community or students that were engaged in that  
20 protest?

21 A There are several measures that could be taken in a  
22 circumstance like that, not the least of which is enhancing  
23 staffing, manpower, whether it be available manpower from the  
24 SUNY police or local police that they could bring in to  
25 augment them. There's other different security measures that

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1 they could take, up to, and including, embedding an  
2 undercover operative in the march.

3 Q Can you describe your understanding of, just  
4 generally, the campus security that was existent on the  
5 campus before the Kershner controversy in relation to, for  
6 example, cameras and phones on campus and campus safety prior  
7 to the Kershner controversy?

8 A There were -- well, Chief Isaacson testified that  
9 there's 300 cameras on the campus -- which they have a pretty  
10 robust camera system on the campus. They have a certain  
11 amount of manpower in terms of patrol officers but with  
12 respect to the campus security as a whole and overall, the  
13 only facilities on the campus, if you will, that are secure,  
14 for the most part, would be the dormitories.

15 Q And I think you also testified that there were blue  
16 light phones throughout the campus; is that correct?

17 A Right. Those are emergency phones that,  
18 presumably, when you're standing in one place, you could see  
19 a phone no matter where you're standing on campus and that  
20 phone, if you pick it up, would go right to a dispatcher.  
21 And the way it's supposed to work is that the camera, the  
22 nearest camera or cameras within the area, is supposed to  
23 pull up whoever's on the phone and what's going on over  
24 there.

25 Q And these are all measures that were in place prior

Olivo - Direct - Covert

1 to the Kershner controversy?

2 A Correct.

3 Q Which began February 2nd, correct?

4 A Correct.

5 Q Was there any indication through Mr. Isaacson's  
6 testimony, or the documents you reviewed, that any of those  
7 security measures were enhanced in any manner after  
8 February 2nd, 2022, in relation to the Kershner controversy?

9 A No.

10 Q Now, you also reviewed documents and heard  
11 Mr. Isaacson's testimony in relation to addressing concerns  
12 for Mr. Kershner's safety on February 2nd and in the days  
13 thereafter, correct?

14 A Correct.

15 Q And what is your understanding of the measures that  
16 were taken by Mr. Isaacson or campus security in relation to  
17 Mr. Kershner's safety on February 2nd and the days  
18 thereafter?

19 A I'm not aware of any enhanced security protocols  
20 that they put in place physically to protect Professor  
21 Kershner, other than advising him of the potential threat and  
22 that they believe he shouldn't come back on campus.

23 Q And is that evidence to you of any actual concern  
24 that there may be violence visited upon Mr. Kershner due to  
25 the controversy?

Olivo - Direct - Covert

1 A No.

2 Q What measures would you have expected that they  
3 take in relation to Mr. Kershner's safety, if they actually  
4 believed that he was under threat of violence by some known  
5 or unknown individual?

6 A As I stated earlier, I would have enhanced the  
7 security both in his workspace and on the campus environment  
8 where he is located. So we would have suggested enhancing  
9 security to the workspace by locking the exterior doors or  
10 access to the building. I believe there was testimony  
11 regarding the upgrade of the locks to the classrooms  
12 themselves to make it more of a K through 12 environment.

13 So those enhanced locks that were put in that the  
14 university paid a half a million dollars for over the  
15 previous years, those are great locks and those are great  
16 systems and they should have been put in place in his  
17 workplace, as well as his classroom. And they could have  
18 provided either a contract guard service or a campus security  
19 officer to escort him.

20 Q We're going to show you what's been marked as  
21 Plaintiff's Exhibit 89 which is in evidence.

22 **THE COURT:** This is in evidence already?

23 **MR. COVERT:** It is in evidence.

24 And if you can scroll down, Megan.

25 Q Is this a document that you have reviewed, the

Olivo - Direct - Covert

1 email that Mr. Isaacson wrote on February 2nd, 2022, at  
2 10:23 a.m.?

3 A Yes.

4 Q And it's an email concerning the safety plan that  
5 they were going to effectuate in relation to Mr. Kershnar on  
6 February 2nd in response to the controversy?

7 A Correct.

8 Q And if you can just review what were the plan in  
9 relation to providing for the safety of Mr. Kershnar?

10 A I don't know what was planned subsequent to this  
11 memo. But at this time, it appears that Chief Isaacson was  
12 referring to Dr. Kershnar as a protectee which would have  
13 been to provide for physical security for him while he was on  
14 campus.

15 Q And what was the proposal of Mr. Isaacson in  
16 relation to Mr. Kershnar who he described as a protectee?

17 A That he would like to have a meeting with him or be  
18 part of the discussions with him on how to best safeguard him  
19 by the University Police Department to provide for his  
20 physical safety. He wanted to discuss with him where he  
21 would be on campus and when. Methods of which he could  
22 identify or advise the university police of a safety concern.  
23 And how they could advise him if they became aware of a  
24 credible threat to his physical safety.

25 Q Now, in your professional opinion, providing for

Olivo - Direct - Covert

1 threat assessments on various campuses, would you consider  
2 this to be a heightened response or a significant response  
3 that's indicative of the belief that there is going to be  
4 imminent violence on campus or concern for Mr. Kershner's,  
5 campus's, or the student's safety?

6 A I believe it is a response that would have been  
7 minimally acceptable at the time.

8 Q Okay. But not very significant?

9 A No. It does not address anything beyond those  
10 three bullet points.

11 Q Now you're also aware of the situation involving,  
12 on February 2nd, a note taped to Mr. Kershner's office door?

13 A Yes, I've seen it.

14 Q And what is your understanding of the campus's  
15 response to the taping of that note on that door -- on his  
16 door?

17 A I've not seen any police reports with respect to  
18 what they did from an investigator perspective with the note.  
19 So I, other than accepting the note and just documenting it,  
20 I don't know that there was any additional response.

21 Q To your knowledge, was there any attempt to  
22 determine who the individual was who left that note on his  
23 door?

24 A Not to my knowledge.

25 Q And could they have tried to identify who the



Olivo - Direct - Covert

1 individual was or what measures would they have taken if they  
2 thought that this was a serious threat?

3 A I believe from an investigator perspective, they  
4 definitely could have attempted to identify who the person or  
5 persons were that put that there by several means.

6 Number one, they could establish a timeline of when  
7 that would have been put there based upon when either  
8 Professor Kershner or his office mate left that area and  
9 locked that door. So, whatever time they left until the time  
10 it was discovered would give you a timeline.

11 The second step would be, given the amount of  
12 cameras and video surveillance that they have, I didn't see  
13 any evidence that they reviewed that or took it a step  
14 further and try to attempt to identify that person or  
15 persons.

16 Q Does that evidence to you a concern that that note  
17 is indicative of the possibility of actual violence being  
18 visited upon Mr. Kershner or upon the campus?

19 A Not from the level of response that the campus  
20 brought out.

21 Q Now, there's also been references by Mr. Isaacson,  
22 and in some documents, to communications shortly after -- on  
23 February 2nd and shortly thereafter, to law enforcement  
24 partners including Chautauqua County Sheriff's Office and  
25 New York State Police.

Olivo - Direct - Covert

1           Are you familiar with any actual attempt to  
2     integrate outside law enforcement on to the campus to  
3     actually assist in providing safety to the campus?

4           A     I'm not aware of any.

5           Q     And did you hear Mr. Isaacson discuss in any detail  
6     any substantive attempts to have outside law enforcement  
7     assist them on the campus?

8           A     I did not.

9           Q     And would you expect that to be a normal course of  
10    conduct in providing for a safety assessment for a capacity  
11    to have outside law enforcement agencies assist a campus in  
12    campus security?

13          A     I believe in a campus environment such as SUNY  
14    Fredonia, given the location of the campus, as well as the  
15    resources that they have, that would have been a prudent --  
16    in fact, expected -- response to it by engaging the law  
17    enforcement community as a whole, the local police, being the  
18    Fredonia police, as well as the Chautauqua County Sheriff's  
19    Office and the New York State Police.

20          Q     Now you also saw documents and heard testimony from  
21    Mr. Isaacson in relation to the threats that were on social  
22    media and were posted in various -- and also sent in emails  
23    to the campus in the weeks shortly after February 2nd, 2022,  
24    correct?

25          A     Correct.

Olivo - Direct - Covert

1           **Q**     And Mr. Isaacson testified that he did not provide,  
2     or forward any of those emails or threats or social media  
3     threats to local or federal law enforcement agencies,  
4     correct?

5           **A**     Correct.

6           **Q**     Would you have expected that if he actually  
7     believed that those threats were credible, threats of  
8     violence to the campus, that he would have forwarded those to  
9     local law enforcement or federal agencies?

10          **MS. PANTZER:** Your Honor, I'm going to object to that  
11     question. Would you expect if he believed --

12          **THE COURT:** Yeah.

13          **MS. PANTZER:** I think that --

14          **THE COURT:** Sustained. Sustained.

15          **MS. PANTZER:** Thank you.

16          **Q**     In your professional opinion, what would you have  
17     expected Mr. Isaacson to do with those threats if he believed  
18     that they were actually legitimate threats of violence to the  
19     campus?

20          **A**     In my professional opinion, and also in our  
21     practice, we actually advise all of our clients campus wide  
22     to have a zero tolerance policy. So if there is a credible  
23     threat that's made, law enforcement should be notified  
24     immediately of that credible threat. And if there is any  
25     type of imminent threat, then obviously physical protective

Olivo - Direct - Covert

1 measures should be enhanced and taken.

2 So, if these threats that were communicated via  
3 email and/or phone that they were able to identify these  
4 individuals through, there should have been a referral to  
5 local law enforcement for several reasons, one, one of which  
6 would be to put those people on law enforcement's radar as a  
7 potential threat or hostile actor toward the campus or  
8 Mr. Kershner or Mr. Kolison or anyone else.

9 The second thing is, is that some of these people  
10 may have already been on law enforcement's radar. They may  
11 have been identified as potential bad actors or threats prior  
12 to them making this commentary online or via the telephone.

13 Q And if law enforcement was given the names of  
14 individuals who were already on their radar, in your  
15 professional opinion, what would that lead to?

16 A It would have led to an investigation by local law  
17 enforcement or whomever was assigned to that individual  
18 threat.

19 Q And in providing advice to campuses throughout your  
20 career, were there ever instances where you advised campuses  
21 that they should not forward threats to law enforcement  
22 agencies?

23 A No.

24 Q And why is that?

25 A For the reasons I just stated: Number one, there

Olivo - Direct - Covert

1 should be a zero tolerance policy. So anybody makes a  
2 threat, there should be steps taken. If it is a actionable  
3 threat of a criminal nature, when law enforcement decides  
4 that that is, they would find that person or cite them or  
5 arrest them or charge them somehow and also provide them with  
6 a trespass notice that they should not be on campus, and if  
7 they're caught in the vicinity of the campus, they be  
8 arrested. So there should be a heightened level of awareness  
9 there.

10 And, as I stated, if the individual that is  
11 identified in the threat may already be a threat to others  
12 and may already be on law enforcement's radar and/or  
13 probation or something of that nature.

14 Q Now, Mr. Isaacson testified that one of the reasons  
15 he did not send any threats at all to the Department of  
16 Justice was because he felt that there was not enough  
17 information to actually arrest and charge that person,  
18 correct?

19 A I believe that's what he said, yes.

20 Q In your professional opinion, is that an  
21 appropriate analysis as to whether or not you should forward  
22 threats to law enforcement?

23 A It is not.

24 Q Why is that?

25 A Because it's not your job as a law enforcement

Olivo - Direct - Covert

1 professional, investigator or security consultant to  
2 determine whether or not someone is going to be prosecuted.  
3 That's up to the prosecutor, the DA, the U.S. Attorney's  
4 Office.

5 Q Mr. Isaacson also testified that he, in his  
6 opinion, he thought that causing these individuals to be  
7 arrested, the ones that were making threats, would increase  
8 scrutiny of the campus and cause additional threats, correct?

9 A I believe that's what he said.

10 Q All right. In your professional opinion, is that  
11 appropriate to the analysis of whether to forward threats to  
12 the campus to law enforcement agencies?

13 A No.

14 Q Why not?

15 A For the same reasons that I stated earlier: That  
16 there should be a zero tolerance policy for anybody that  
17 communicates a direct threat to an individual, whether it  
18 be an administrator, Professor Kershner, or even someone  
19 working in the cafeteria, there should be a zero tolerance  
20 policy for that.

21 Q And the lack of, in your professional opinion, the  
22 failure of Mr. Isaacson to forward any of the threats in  
23 February of 2022 to any law enforcement, is that indicative  
24 of his not actually believing that there is an actual  
25 threat --

Olivo - Direct - Covert

1       **MS. PANTZER:** Object.

2       **Q**     -- to the campus based upon those communications?

3       **MS. PANTZER:** Objection, your Honor.

4       **THE COURT:** Sustained.

5       **Q**     In your professional opinion, the -- what  
6     interpretation would you give to Mr. Isaacson's failure to  
7     forward any communications involving threats to any law  
8     enforcement agency?

9       **A**     Oh, I believe that Chief Isaacson made the decision  
10    not to do so because he believed that none of these people  
11    would be prosecuted and that's why he didn't do so.

12            In my opinion, that's the wrong decision to make.  
13    Again, it's not your decision whether or not someone will be  
14    prosecuted for threats. If it is a direct threat that you  
15    think is credible, then that is something that should be  
16    referred to law enforcement.

17       **Q**     Mr. Isaacson also testified regarding the level of  
18    threat assessment involving individuals who discuss  
19    pedophilia, correct?

20       **A**     Yes.

21       **Q**     And in his opinion, individuals who discuss  
22    pedophilia are -- he describes as having a level of hatred  
23    from the public that is of its own nature and is not  
24    equivalent to other levels of hatred?

25       **MS. PANTZER:** Objection, your Honor.

Olivo - Direct - Covert

1           **THE COURT:** Yeah, sustained to the form of the question.

2           **Q**     Do you agree with Mr. Isaacson's conclusion that  
3 individuals who discuss pedophilia cause more hatred than  
4 individuals who discuss other controversial issues?

5           **A**     I don't believe that that's accurate.

6           **Q**     In your professional opinion, what other areas of  
7 discussion are controversial and could cause hatred and  
8 protests to college campuses?

9           **A**     Well, we've seen it not only on college campuses  
10 but in the K through 12 environment, so there's everything  
11 from abortion to critical race theory being taught in the  
12 school and here in Western New York, real life examples were  
13 the COVID masking mandates that were enhanced. We had  
14 several school superintendents who were threatened regarding  
15 mask mandates.

16          **Q**     And what, in your opinion, what should those  
17 campuses do in relation to those issues you just discussed,  
18 COVID and race and other such controversial issues?

19          **A**     Well, we -- it depends on the threat or the  
20 presumed threat that was communicated. But, again, zero,  
21 zero tolerance policy, anybody that made such a threat or  
22 threatened a school superintendent, police were notified,  
23 there were charges brought, there were trespassing notices  
24 given, there was enhanced security at the school itself by  
25 locking the doors to the school and not allowing visitors who



Olivo - Direct - Covert

1 were not expected to the school. Local law enforcement was  
2 notified to add extra patrols to the area and/or -- and if  
3 the school did have an SRO, or school resource officer, they  
4 were put on alert as to who made those threats.

5 Q And are those measures that you just described also  
6 measures that could have been taken in relation to the  
7 Kershner controversy in securing Mr. Kershner, President  
8 Kolison and the campus students?

9 A Yes.

10 Q Now, by March 17th, 2022, Mr. Isaacson issued a  
11 threat assessment that indicated that Mr. Kershner would  
12 essentially never be allowed back on campus?

13 MS. PANTZER: Objection, leading.

14 THE COURT: Yeah, sustained.

15 Q Okay.

16 THE COURT: Sustained to the leading.

17 Q Are you familiar with Mr. Isaacson's recommendation  
18 in this threat assessment on March 17th, 2022?

19 A Yes.

20 Q And what is your understanding of his threat  
21 assessment?

22 A My understanding is that his recommendation was  
23 that there was no environment that would allow for Mr. --  
24 Professor Kershner to be allowed to be back on campus or to  
25 teach even remotely at SUNY Fredonia that would eliminate the

Olivo - Direct - Covert

1 potential threat environment.

2 Q And is it your understanding that his opinion ever  
3 changed between March 17th of 2022 and that assessment and  
4 when he retired on June 30th of 2023?

5 A It, it did not, to my knowledge. I believe he  
6 testified it did not.

7 Q And do you agree with his assessment that began as  
8 late as March 17th, 2022, and continued through June 30th of  
9 2023, that there was no environment in which Mr. Kershner  
10 could be returned to the campus?

11 A I do not agree with that.

12 Q What is your opinion?

13 A My opinion is that there is a methodology and  
14 protocols that could be put in place to which Professor  
15 Kershner could be returned to campus and the campus could be  
16 secured if he were to, in fact, return to campus as a  
17 professor.

18 Q And did you see any evidence either in the  
19 documents you reviewed or in listening to Mr. Isaacson's  
20 testimony that he ever looked towards any alternatives to  
21 banning Mr. Kershner from the campus?

22 A I did not see anything of that nature.

23 Q In your professional opinion, should he have looked  
24 at alternatives to returning Mr. Kershner to the campus?

25 A There are many alternatives, yes, that he should

Olivo - Direct - Covert

1 have looked at.

2 Q And I know you've already discussed some of them  
3 but if you can discuss them again as to what he should have  
4 looked at, what alternatives he should have looked at?

5 A He could have looked at many different  
6 alternatives, number one being securing the building where  
7 Dr. Kershner would have been teaching and/or working. I  
8 believe there was only a limited amount of hours where  
9 Dr. Kershner would have been on campus anyway. During that  
10 timeframe he could have provided a -- one of the SUNY campus  
11 police officers or an off-duty officer or an armed guard from  
12 a private contracting firm that would be available when  
13 Dr. Kershner was on campus.

14 And we already have the enhanced locking systems on  
15 the doors. I'm going to assume that they're on all the  
16 campus doors. I don't know that for a fact but from Chief  
17 Isaacson's testimony, as well as what I read in the article,  
18 they enhanced those door locks on all those campuses, so  
19 that's already there in place.

20 And in addition to the police officers, additional  
21 patrols, I would have them enhance the video monitoring in  
22 those areas when Professor Kershner is on campus, just as  
23 they did in March for pur -- Mr. Kolison.

24 Q So, are you familiar with a threat assessment that  
25 was commissioned by Mr. Isaacson and by the campus in

Olivo - Direct - Covert

1 relation to campus security in September of 2022?

2 A Yes.

3 Q And can you describe that report?

4 A It was an open source intelligence investigation  
5 done by A1C Corporation and it was -- included a threat  
6 assessment.

7 Q And was A1C commissioned to conduct a threat  
8 assessment in your opinion?

9 A I believe so.

10 Q And what makes you believe that?

11 And, Megan, you can do Plaintiff's Exhibit 91.

12 **THE COURT:** In evidence?

13 **MR. COVERT:** It is in evidence, your Honor.

14 Q And I can hand it to you, as well, if it's easier,  
15 Mr. Olivo.

16 A This is the engagement between --

17 Q Yes. And on the second page, scrolling down to  
18 realtime situational awareness of events. In your opinion --  
19 and have you in your practice engaged in these types of  
20 assessments?

21 A Pretty much on a regular basis.

22 Q All right. And what is --

23 A Not our firm personally but we have a professional  
24 threat analysis, an open source intelligence firm that we  
25 work with.

Olivo - Direct - Covert

1           Q     That you work with?

2           A     Yes.

3           Q     And what does the scope of work mean -- that's the  
4 document 91 -- what does that mean?

5           A     The scope of work basically outlines what you would  
6 be looking for, what you would want the intelligence analysts  
7 to look for with respect to their open source intelligence  
8 investigation. In this case here, on, I believe that's  
9 Page 2, that these, this scope of work included these three  
10 bullet points.

11          Q     And if -- what is your understanding as to whether  
12 that included a threat assessment that was -- that they were  
13 being asked to engage in by the campus?

14          A     In bullet point number two, it says threat  
15 intelligence through open source tools and methodologies of  
16 events of interest that may include threats to community  
17 safety and law enforcement officers and infrastructure and/or  
18 in preparation for specific law enforcement operations.

19          Q     So, in your opinion did they commission A1C to  
20 engage in a threat assessment?

21          A     Yes.

22          Q     And did you review the A1C report?

23          A     I did.

24          Q     And what is your opinion as in relation to their  
25 findings of whether there is a threatened on campus in

Olivo - Direct - Covert

1 September of 2022?

2 A They indicated in the report that there was no  
3 credible or imminent threat identified.

4 Q Now you also heard Mr. Isaacson testify, and in his  
5 written report he also discounted the A1C report, he did not  
6 include the passages from the A1C report regarding threat  
7 assessments, correct?

8 MS. PANTZER: Objection, leading.

9 THE COURT: Sustained.

10 Q In relation to Mr. Isaacson's report to the Court,  
11 which I believe is Defendant's Exhibit number 1, in your  
12 opinion, did he properly provide the court with the A1C's  
13 analysis of the threat to the campus or lack thereof.

14 A He did not include A1C's complete analysis and  
15 summary in his report.

16 Q But he did include those passages from the report  
17 that supported his opinion, correct?

18 A Correct.

19 Q And do you have -- having reviewed -- how many  
20 threat assessment reports do you think you've reviewed in  
21 your career?

22 A In my career, several hundred.

23 Q And in your opinion, is the A1C threat assessment  
24 report valid, is it properly sourced and properly come to  
25 proper conclusions?

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1           A     I reviewed the credentials of the team at AlC.  
2     They're very highly qualified to conduct this investigation.  
3     I never worked with them personally but, in my opinion, it's  
4     a professional assessment and well done.

5           Q     And do you believe in your professional opinion  
6     that Mr. Isaacson should have discounted the findings in the  
7     AlC report in relation to the lack of threat to the college  
8     campus?

9           A     No, I do not.

10          Q     Why not?

11          A     Because he engaged a team of professionals, who I  
12     think he testified to he had a personal relationship with at  
13     least one of them, to engage them to conduct this assessment  
14     and to just discount their assessment because you disagree  
15     with it. I don't agree with that. I think that he should  
16     have taken this assessment into account when he made his  
17     decisions.

18          Q     And did you also, as part of your engagement by  
19     FIRE, did you retain the services or assist in retaining the  
20     services of another agent or group that would provide a  
21     threat assessment?

22          A     An open source intelligence investigation such as  
23     this, yes.

24          Q     And can you describe that to the court?

25          A     The firm is called Camelot Investigations. It's

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1 run by an individual named Sandra Stibbards. She is a expert  
2 in open source intelligence investigations and teaches  
3 classes throughout the world on it. So, we asked her to do a  
4 similar assessment without giving her the AIC report of the  
5 circumstances that surrounded this event. And I believe you  
6 have a copy of her final report but her findings were very  
7 similar, if not identical, to what AIC found.

8 Q And, so, what were her findings?

9 A Her findings were that there was no credible threat  
10 or imminent threat that was identified through her open  
11 source intelligence investigation and it was, in fact, no  
12 identifiable information regarding Dr. Kershner and this  
13 event past what AIC had identified and even subsequent to our  
14 hearing on earlier this month when this hearing and all of  
15 the events surrounding it were publicized in the media, there  
16 was no additional threat that she could identify.

17 Q What additional publicity occurred in the last few  
18 months that she was also reviewing to see whether there --  
19 that caused any additional threats to Mr. Kershner or the  
20 campus or students?

21 A Oh, there's a New York Times article. There was  
22 Channel 2 news locally.

23 Q And when were these roughly?

24 A After the hearing.

25 Q So after the September 13th and 14th of --



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1 A Right.

2 Q -- 2023 hearing?

3 A There was a local talk show host David Bellavia did  
4 an entire block of conversation about this hearing on his  
5 talk show. So there was a lot of media that was -- occurred  
6 after the last hearing --

7 Q And --

8 A -- or last date.

9 Q And she was retained to review whether there was  
10 any increased threat based upon that, those reports after the  
11 hearings of September 13th and 14th of 2023?

12 A Correct.

13 Q Do you know when she issued her report roughly? I  
14 can hand it to you to refresh your recollection.

15 A If you could. I would say it was roughly last  
16 Tuesday but I'm not sure --

17 **MR. COVERT:** Your Honor, can I hand --

18 A -- the exact date.

19 Q Would it refresh your recollection if I showed you  
20 the report?

21 A Yes.

22 Q Handing you what's not in evidence as Plaintiff's  
23 Exhibit 98 attachment number 4 which is the Camelot  
24 Investigations report.

25 A September 19th.

Olivo - Direct - Covert

1           Q     Does that refresh your recollection as to when they  
2 issued -- Camelot issued this report?

3           A     Yes.

4           Q     And those findings in your opinion -- well, if you  
5 can describe the findings and the conclusions that they  
6 reached?

7           A     You want me to read report?

8           Q     No. I can hand it to you, if you like.

9           A     Basically the conclusion was again similar to what  
10 AIC found that there was no credible imminent or identifiable  
11 threat.

12          Q     Based upon the AIC report or the Camelot report, in  
13 your professional opinion, is there any reason Mr. Kershner  
14 could not be returned to the campus in a safe manner?

15          A     No.

16          Q     In your professional opinion, would it be  
17 prohibitively expensive to return Mr. Kershner to the campus  
18 in a manner that is safe to him, to the administration, and  
19 to the students?

20          A     No.

21          Q     There's no reason not to return him to the campus,  
22 in your opinion?

23          A     Not that I am aware of.

24          Q     What would you advise, if you were advising in your  
25 professional opinion, the SUNY campus to do, at least for the

Olivo - Direct - Covert

1 short term, in returning Mr. Kershner to the campus?

2 A I would implement the technologies and the sources  
3 that we discussed earlier with respect to locking mechanisms.  
4 And, again, I'm not familiar with the exact building that  
5 Professor Kershner works in but I am familiar with a lot of  
6 the buildings on campus where they have a mechanical lock or  
7 a electronic locking systems. The electronic locking systems  
8 would be accessed either by an ID card or a fob or something  
9 of that nature. If they already have that in place on that  
10 door, like they do in many of the other buildings on campus,  
11 it's a matter of programming. So they could just program  
12 that door or the entrance door to Professor Kershner's  
13 academic building to allow him and/or any students that have  
14 classes during that timeframe access to that building while  
15 he's there. So that would secure the environment of his  
16 academic building.

17 The second thing I would consider doing, as I said  
18 before, would be either to provide a campus police officer or  
19 a guard, at least initially while he is on campus to escort  
20 him. And also make an enhanced awareness of the dispatcher  
21 whomever's assigned to camera viewing, just like they did  
22 with Mr. Kolison while Professor Kershner's there. Professor  
23 Kershner should probably notify campus security when he's  
24 leaving if they don't have a guard posted with him. Maybe  
25 they send somebody over there to escort him to and from his

Olivo - Direct - Covert

1 vehicle, follow him off campus to make sure that he's not  
2 being followed from campus. And that would be it.

3 Q Are you familiar with the measures that were taken  
4 on March 25th of 2022, when apparently Mr. Kolison, President  
5 Kolison, indicated that he had some fear for his safety?

6 A Yes.

7 Q And what measures were those?

8 A I believe there was a directive by Chief Isaacson  
9 to his dispatcher to monitor the cameras when Professor  
10 Kolison went to and from his vehicle. And, also, there was a  
11 directive to repair a panic button system that was in  
12 Professor Kolison's office. Actually at his secretary's  
13 desk.

14 Q And in your professional opinion, were those  
15 appropriate responses to Mr. Kolison's concerns on March 25th  
16 of 2022?

17 A They're minimal at best. I mean, there would have  
18 been much -- much better responses to that concern of a  
19 threat.

20 Q So your -- is it your opinion that that is a low  
21 level response indicating a low level threat?

22 A Or a nonexistent threat.

23 Q And up and between February 2nd of 2022 and March  
24 25th of 2022 when they took these minimal measures, were  
25 there any other measures put in place, especially during the

Olivo - Direct - Covert

1 weeks after February 2nd when there was the most social media  
2 and internet traffic?

3 A I'm not aware of any.

4 Q None. So the first measures were taken in March --  
5 to your knowledge, in March 25th, 2022?

6 A The first enhanced security measures, by that I  
7 mean physical security measures that I'm aware of with  
8 respect to professor -- or Dr. Kolison or Mr. Kolison.

9 Q And could they have taken those exact same measures  
10 back in February and March of 2022 to secure the safety of  
11 Mr. Kershner?

12 A Yes.

13 Q Was there any evidence that they reviewed those as  
14 options for doing so?

15 A Not that I'm aware of.

16 **MR. COVERT:** Your Honor, at this time I would like to  
17 move the --

18 Q Well, I'm going to have you review the expert  
19 rebuttal report, Mr. Olivo, the cover page.

20 Do you recognize that as an expert rebuttal report  
21 that we submitted to the defendants?

22 A Yes.

23 Q And --

24 A Yes.

25 Q And on Page 21 of that report, you signed your name

Olivo - Direct - Covert

1 to that?

2 A Yes.

3 Q And there's a, also a notary who signed counter to  
4 your signature?

5 A Yes.

6 Q And does that report accurately reflect your  
7 opinions in relation to this matter?

8 A Yes, it does.

9 Q And is that based upon your review of the documents  
10 you were provided and listening to Mr. Isaacson's testimony?

11 A Yes.

12 MR. COVERT: Okay. We would move that and the exhibits  
13 into evidence, your Honor.

14 MS. PANTZER: No objection, your Honor.

15 THE COURT: Received without objection.

16 Q Going to Page 6, top of the page.

17 Is it your professional opinion that Mr. Isaacson's  
18 various threat assessments from February 2nd, 2022, through  
19 his retirement on June 30th of 2023, were not consistent with  
20 your opinion of the threat assessment?

21 A That is correct.

22 THE COURT: Can I -- let me ask a question because  
23 there's something that's troubling me.

24 One of the things that Mr. Isaacson testified to  
25 was that threats were not so much what he was worried about.

Olivo - Direct - Covert

1 What he was worried about were emails and posts and things  
2 like that, that were not actually overt threats but that  
3 expressed concern or problems with what Professor Kershner  
4 said.

5 When you're using the word "threat assessment",  
6 is that different than a risk assessment or is that the same  
7 thing?

8 A That's a great question, your Honor. In fact,  
9 those terms are often interchangeable amongst many people not  
10 only in the public but in our industry. So there's, there's  
11 two different types of threat assessments, one of them is the  
12 behavioral assessment that was done or that Chief Isaacson  
13 was talking about.

14 The other one is by taking that data and  
15 everything, you know, compiling a threat assessment from  
16 that, as well as everything else such as the emails, such as  
17 the voicemails that were left and taking those things and  
18 then conducting a risk assessment so from the threat what is  
19 the risk? How do we move forward to mitigate that risk or,  
20 you know, neutralize the risk or terminate the risk, however  
21 you want to talk about, but eliminate the risk.

22 And so it happens every day. I mean, quite  
23 frankly, there's people in this courthouse every day that  
24 have had many things on social media or in the news written  
25 about them derogatorily. No offense, but Mr. Covert should

Olivo - Direct - Covert

1 probably be under protection 24 hours a day if -- in order to  
2 go down that road. So by taking all of that data, then you  
3 assess the risk and that's where the risk assessment comes.

4 **THE COURT:** Is that what we're talking about now?

5 **THE WITNESS:** We're talking about the risk assessment  
6 and how we would mitigate any risk.

7 **THE COURT:** Right. And so when you say "threat  
8 assessment", that's not based solely on threats, it's based  
9 on the entire threat scan, also postings that might not be  
10 direct threats but that might create a risk?

11 **THE WITNESS:** Right. You have to take all of that into  
12 account.

13 **THE COURT:** So you're using threat assessment and risk  
14 assessment interchangeably here; is that right?

15 **THE WITNESS:** That's correct.

16 **THE COURT:** Okay, thank you.

17 I'm sorry, Mr. Covert, to interrupt but I just wanted  
18 to --

19 **MR. COVERT:** No. And I really would urge the Court to  
20 ask any relevant questions because I think that this should  
21 be more of a conversation so that the Court's satisfied with  
22 whatever conclusions it makes because those are good  
23 questions and that's obviously not our area of expertise and  
24 we rely upon these experts to do that. So I'm just trying to  
25 formulate the right questions.



Olivo - Direct - Covert

1 If I could have one moment, your Honor.

2 **THE COURT:** Sure.

3 **Q** Mr. Isaacson testified that, in his opinion,  
4 allowing Dr. Kershner back on campus would create a situation  
5 even more dangerous than it faced in February of 2022,  
6 correct?

7 **A** I believe so.

8 **Q** Do you agree with his assessment?

9 **A** I do not.

10 **Q** Why?

11 **A** Because there's been no quantifiable or  
12 identifiable evidence that there is any threat, whether it be  
13 imminent or, you know, displayed, there's nothing that we can  
14 identify, no credible, no imminent or likely threat to either  
15 Dr. Kershner or the campus at the current time.

16 **Q** You heard Mr. Isaacson also opine that the lack of  
17 a threat does not mean that there is not a threat and use  
18 that as a justification to ban Mr. Kershner from the campus,  
19 correct?

20 **A** Correct.

21 **Q** Do you agree with that opinion?

22 **A** I don't agree with it. But I also would like to  
23 point out that, for all intents and purposes, Professor  
24 Isaacson still is on the campus and employed.

25 **Q** Professor Kershner.

Olivo - Direct - Covert

1           A     Professor Kershner, I'm sorry.

2                     He still is on the campus and employed. He's on  
3 the website. There is nothing to indicate that he's not  
4 working there.

5           Q     So, in your opinion, individuals who would look at  
6 the campus website would still be under the belief that he is  
7 still employed by the campus, teaches at the campus, that  
8 there's no reason to believe that he has been severed from  
9 the campus?

10          A     Not to my knowledge.

11          Q     And why is that significant to your opinion?

12          A     Because in following Chief Isaacson's train of  
13 thought, those people who are not making direct threats have  
14 had well over a year and a half now to take any action.  
15 Knowing that he is still employed by that university, they  
16 have not taken, you know, they have not taken any action to  
17 terminate him or make him not an employee of theirs. So, by  
18 doing so, there was some threats communicated to the  
19 university as a whole, if you want to call it a threat, where  
20 you need to get rid of this guy, those type of things, those  
21 were things that were included in Chief Isaacson's assessment  
22 as a threat.

23                     I would say, in my opinion, that that is not a  
24 direct threat. But in doing so, by these people  
25 communicating that -- this is back in February, of course, of

Olivo - Direct - Covert

1 2022 -- but they're saying that they want this guy off  
2 campus. He's never been taken off the campus in terms of  
3 being employed there. So there's not been any action that's  
4 been taken or any threats or overt actions taken against the  
5 campus community or Mr. Kolison as a whole since then.

6 **Q** And --

7 **THE COURT:** If he's put back on campus, there's going to  
8 be a firestorm of media attention and emails and Tweets and  
9 all sorts of stuff, right?

10 **THE WITNESS:** I do not disagree with that, your Honor.

11 **THE COURT:** Okay. And don't you think that that would  
12 increase the risk of some crazy bringing a gun to campus and  
13 start an issue?

14 **THE WITNESS:** Not any more than it did in February of  
15 2022.

16 **THE COURT:** But he was taken off in February of 2022,  
17 right? The University took some steps to get him off campus  
18 in February 2022?

19 **THE WITNESS:** They took steps but, but nobody else on  
20 campus was threatened -- I think the argument is also that  
21 it's not just Professor Kershner. I heard Chief Isaacson  
22 testify that Professor Kershner can't even teach remotely.  
23 And because of that, the university and the campus as a whole  
24 and their administration are a target of unknown actors.

25 So, even if he's not physically on the campus, Chief

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1 Isaacson is arguing that there's still a threat. He is not  
2 physically on the campus right now; however, there's been no  
3 actions.

4 **THE COURT:** And you don't think the risk is going to  
5 increase if he's brought back on?

6 **THE WITNESS:** I believe the chatter will increase and if  
7 there's an identifiable threat at that time, they can  
8 mitigate it.

9 I guess my question, your Honor, are we talking about  
10 threats to Dr. Kershner or threats to the campus --

11 **THE COURT:** Well --

12 **THE WITNESS:** -- as a whole?

13 **THE COURT:** -- you're using the word "threat", and I  
14 want to use the word "risk".

15 **THE WITNESS:** Risk, okay.

16 **THE COURT:** And I want to use the word "risk". Because,  
17 you know, I see both sides of this. I see both sides of this  
18 issue. And one of the real concerns I have is the increased  
19 chatter that's going to happen when he's back on campus. And  
20 based on what Mr. Isaacson said, that increased attention is  
21 going to increase the risk and I don't see how that's not  
22 true. I mean, that just seems to be a given that the risk  
23 has to increase. The question is how much and whether it's  
24 enough to ban him forever, right? That's, that's got to be  
25 the question.

Olivo - Direct - Covert

1           **THE WITNESS:** I think that's valid. And I think the  
2 other part of the equation has to be: Can the risk be  
3 mitigated while he is on campus?

4           And I would just, if I may, your Honor, just point out  
5 that there are people every day that work in schools, college  
6 campuses and I would submit that there's probably people on  
7 SUNY Fredonia campus right now that have direct, credible  
8 threats made against them. They have restraining orders  
9 against the people who have made those direct, credible  
10 threats but, yet, they not only work on the campus and, for  
11 instance -- and here's -- here's a real life example.  
12 Domestic violence victims, they go to work every day and we  
13 know that they're under a threat. They have restraining  
14 orders against the actors who have threatened them but  
15 they're on college campuses. They're in school districts and  
16 such, so.

17           **THE COURT:** Okay, go ahead. Again, I'm interrupting you  
18 and I shouldn't.

19           **MR. COVERT:** No, not at all. Please. As you know, you  
20 are the one making the ruling, your Honor, so you get --

21           **THE COURT:** No, I know.

22           **MR. COVERT:** You get to ask the right questions.

23           **THE COURT:** I know. But as I said when we started this  
24 proceeding, I told myself I wasn't going become a lawyer and  
25 I was going to be a judge and now I'm somewhere close to that

Olivo - Direct - Covert

1 line.

2 **MR. COVERT:** You have an open invitation to continue,  
3 your Honor.

4 **THE COURT:** Thank you.

5 **Q** So the judge was just asking you about the  
6 possibility, and it's speculative, but the possibility that  
7 if Mr. Kershner's returned to campus, that the controversy  
8 reignites.

9 Do you believe that, in your professional opinion,  
10 that the returning to the campus and reigniting the attention  
11 to the SUNY Fredonia campus would be perpetual, in  
12 perpetuity, or in your professional opinion, is that  
13 something that will increase and then dissipate over time?

14 **A** I don't believe, in my opinion, that it would be  
15 any different than the initial actions that were taken by  
16 people online or the words that were expressed or the  
17 opinions that were expressed. I believe it would be a  
18 short-lived thing that would die out.

19 **Q** And, again, I would note that, in your professional  
20 opinion, that when this controversy came about in February of  
21 2022, there -- the campus did not enhance any security  
22 measures in your professional opinion?

23 **A** To my knowledge, they did not.

24 **Q** Okay. But in this instance, if we were to return  
25 Mr. Kershner to campus, acknowledging, as you did in your

Olivo - Direct - Covert

1 colloquy with the Court, that there would be an increase of  
2 risk to the campus, what measures would you deem to be  
3 appropriate at least for the short term, to return him to  
4 campus to provide for his safety, the safety of campus  
5 officials and the safety of the students?

6 A So, it would be several different components. One  
7 would be the physical security of the building that he works  
8 in and/or has an office in. Both locking it down during the  
9 hours -- not locking it out. Those terms are usually  
10 interchanged as well. Locking down that building, only  
11 allowing access to people who need to be there when Professor  
12 Kershner is there.

13 Having a either a SUNY police officer, off-duty  
14 police officer or a armed guard from a private security  
15 company on campus with him. Having enhanced monitoring of  
16 the video systems that they have in place -- and they have a  
17 robust camera system in place.

18 So, all of those things.

19 And there is one thing that was suggested in the  
20 A1C report that I would also agree with and concur with. And  
21 that is that continuous monitoring of the electronic  
22 footprint and social media be conducted. And they could  
23 engage a firm like A1C to do that.

24 Q Showing you what's been marked and is now in  
25 evidence as Attachment 9 to Exhibit, Plaintiff's Exhibit 98,

Olivo - Direct - Covert

1 can you identify that document?

2 A Yes.

3 **THE COURT:** 99?

4 **MR. COVERT:** 98 is the Plaintiff's Exhibit.

5 **THE COURT:** And it's attachment 9?

6 **MR. COVERT:** Attachment 9.

7 **THE COURT:** Okay.

8 **Q** Can you identify that document?

9 A Yes. It is a financial analysis -- sample  
10 financial analysis I did for various components such as we  
11 spoke here today about enhancing security at SUNY Fredonia.

12 **Q** And in your opinion, are these reasonable measures  
13 that are not prohibitively expensive that would allow SUNY  
14 Fredonia to safely bring Mr. Kershner back on to the campus?

15 A They would enhance the physical security  
16 environment, yes.

17 **Q** And in your estimation and your professional  
18 opinion, should Mr. Isaacson have engaged in similar, maybe  
19 not identical, analysis as to whether there are options that  
20 would have allowed the campus to bring Mr. Kershner back on  
21 to the campus?

22 A That would have been a reasonable and prudent  
23 exercise for him to undertake.

24 **Q** And in your professional opinion, due to your  
25 training, were you in his position as the head of security at



Olivo - Direct - Covert

1 SUNY Fredonia, would you have engaged in this type of  
2 analysis at various periods throughout the time that you were  
3 engaged in this controversy?

4 A Yes.

5 Q And can you give the Court some examples as to the  
6 alternative measures that you found would allow for him to be  
7 brought back on to campus and the costs of those measures?

8 A So, in -- on Page -- the first, the first paragraph  
9 here where we talk about access control. As we spoke about  
10 earlier, if the building that Professor Kershner teaches in,  
11 has an access control system already on the doors to the  
12 exterior, that's just a programming issue. They could just  
13 program the access control cards.

14 I will submit to you that a lot of SUNY campuses  
15 have higher levels of access control and security at the  
16 Dean's office and the HR office than they have anywhere else.  
17 In fact, many SUNY campuses, you need an access control card  
18 to get into the Dean's office and to get into the HR office,  
19 where you can walk unfettered into the buildings that are on  
20 campus. So, the same circumstance would be programmed here  
21 in the building where Professor Kershner teaches.

22 So the approximate cost for installing that system,  
23 if they don't have one, is about \$2,000 per door and that is  
24 let's call it the retail environment in the civilian sector,  
25 civilian world. SUNY has the ability to go through state

Olivo - Direct - Covert

1 contracts and potentially even get it for less expensive  
2 means.

3           If it is a mechanical locking system, there are --  
4 which is basically a lock that a key is utilized on. There's  
5 a high security mechanical system made by a company called  
6 Assa Abloy. They're one of the foremost lock producers in  
7 the world. They can exchange the cylinder of the door for  
8 \$350. That door cylinder can be replaced with an electronic  
9 and mechanical cylinder where every key can be programmed.  
10 So, for instance, it would be a mechanical lock with a key.  
11 The key would look similar to your car key fob. And  
12 Professor Kershner's key could work between 7 a.m. and 3 p.m.  
13 or whatever hours he's going to be on campus. After that, if  
14 he put his key in that lock, it wouldn't work.

15           So the same level of access control can be done on  
16 those locks and on those doors as we would have with an  
17 electronic access control system. So that would be what it  
18 would cost to physically enhance the building.

19           Q     And we're not talking about every building on the  
20 campus, which, as you heard the testimony, seems to have  
21 enhanced locks that have been installed in the last three  
22 years or so. But you're just talking about having these  
23 enhancements done to the building at which Mr. Kershner  
24 teaches, correct, and/or where university officials are  
25 located?

Olivo - Direct - Covert

1           A       Correct. Chief Isaacson testified that it was  
2       their goal to get the academic buildings to the same level of  
3       security as a K-12 campus. And that's what we work at pretty  
4       much all the time. That's pretty much our bailiwick. We  
5       work on K-12 campuses all the time. So if he's going to  
6       enhance security for the academic building where Professor  
7       Kershner teaches, they've already put those locks in the  
8       interior, presumably, on the classrooms. This would be the  
9       way to secure the exterior.

10          Q       So, scrolling down. Then you also discussed armed  
11       guard services. If you can describe what you are referring  
12       to and what the cost would be to the campus in relation to  
13       providing armed guard services for the short term after he's  
14       returned to campus?

15          A       Right. So, we did an analysis, the average salary  
16       of a SUNY police officer is about \$64,000 a year. If they  
17       brought in someone on overtime, that would equate to about  
18       \$48 an hour to provide an off-duty or overtime SUNY police  
19       officer. The average rate for an armed,  
20       professionally-trained licensed security guard in New York  
21       State is about \$75 an hour.

22          Q       And would you require that they pay that 40 hours a  
23       week or just when Mr. Kershner's on the campus?

24          A       Our suggestion would be when Dr. Kershner's on the  
25       campus.

Olivo - Direct - Covert

1           Q     And have you been able to estimate about how many  
2 hours that those are, based upon his schedule?

3           A     From what --

4           Q     Or his schedule prior to him being banned from the  
5 campus?

6           A     From what I've been advised, between classes and  
7 office time, it's approximately ten hours a week.

8           Q     So we're looking at ten hours a week less \$750 a  
9 week while school is in session for armed guard services,  
10 correct?

11          A     While he is on campus and --

12          Q     Class --

13          A     -- engaged in instruction.

14          Q     And you also have a section entitled social media  
15 monitor. If you can describe what that entails and what it  
16 costs?

17          A     Right. So one of the things that A1C suggested in  
18 their report -- and I don't disagree with it -- would be a  
19 monitoring on a monthly basis of social media going forward  
20 for any threats that are communicated online or posted in  
21 chat rooms, et cetera. The average cost for that is 1,000 to  
22 \$1,500 per month on a single subject. So in this  
23 circumstance, it would be a single subject. It would be just  
24 with regard to Dr. Kershner.

25                 There are firms out there that conduct the same

Olivo - Direct - Covert

1 type of thing in what we call a geofenced environment where,  
2 for instance, Depew School District does it. They, they  
3 subscribe to this firm that does all of their school  
4 community -- monitors all traffic regarding their school  
5 community and campus, as well as the immediately surrounding  
6 vicinity for any type of threats, posts of that nature. And  
7 that costs about \$40,000 a year to do that. But we're  
8 talking about between 1,000 and \$1,500 a month to do constant  
9 monitoring of Dr. Kershner.

10 Q And would that monitoring, in your professional  
11 opinion, allow the SUNY campus to determine when they can  
12 relax the safety measures that were instituted immediately  
13 after returning Mr. Kershner to the campus?

14 A Well, that would allow them to monitor, as your  
15 Honor was inquiring about, how much chatter or how much  
16 online traffic is out there indicating animus toward  
17 Dr. Kershner or the campus. And then as that died down, so  
18 to speak, they could take different measures and adjust  
19 accordingly.

20 Q Now, you heard Mr. Isaacson testify that the  
21 absence of a known threat that's verifiable or actionable  
22 does not provide a reasonable basis to conclude that Mr.  
23 Kershner can be safely returned to the campus, correct?

24 A Yes.

25 Q In your professional opinion do you agree with

Olivo - Direct - Covert

1 that, do you find it to be accurate?

2 A I do not agree with it because, again, if that was  
3 the metric that we would be working under, there would be a  
4 lot of people out there that wouldn't be at work every day.  
5 So just because there's no threat or identifiable threat, you  
6 can't say definitively that there's an imminent or credible  
7 threat made.

8 Q And based upon your experience in the military,  
9 Cheyenne police, U.S. Marshal Service, how many years have  
10 you been assisting schools, campuses with threat safety?

11 A Since 2001.

12 Q Okay. So roughly?

13 A 22 years.

14 Q 22 years. Has there been any -- have you ever been  
15 trained through any of those occupation, services, military,  
16 U.S. Marshals, that the absence of a verifiable or actionable  
17 intelligence would justify banning someone from the campus in  
18 perpetuity?

19 A I've never had any training to that extent about  
20 something of that nature. Nobody's ever said that to me.

21 Q All right. And you have never advised any campus  
22 that because we don't know who's out there and we don't have  
23 any intelligence, that you should ban individuals in  
24 perpetuity?

25 A Correct, I've never advised that.

Olivo - Direct - Covert

1           Q     You're also familiar with events that occurred more  
2 recently in relation to an FBI duty to warn that was provided  
3 to the campus?

4           A     I did read some email exchanges regarding that,  
5 yes.

6           Q     In January of 2023, correct?

7           A     Correct.

8           Q     And in your professional opinion, what significance  
9 do you attach to the FBI duty to warn where there was no  
10 ability to determine the credibility of the threat?

11          A     I would not attach any significance to it that  
12 would change my opinion regarding the ability to secure  
13 Dr. Kershner and/or the SUNY Fredonia campus if he were to  
14 return to work because there was no credible imminent or  
15 likely threat identified.

16          Q     Mr. Isaacson indicated that, in his opinion, while  
17 they're -- the FBI informed the campus that there was no  
18 credible threat, they don't know, they don't have information  
19 regarding the threat, that that, nevertheless, leads him to  
20 believe in his opinion that they're still is a level of  
21 threat, correct?

22          A     I believe he testified to something along those  
23 lines.

24          Q     In your professional opinion, do you agree with  
25 that assessment?

Olivo - Direct - Covert

1 A I do not.

2 Q Why is that?

3 A Because I believe that the chatter line, or where  
4 they picked up this chatter, and according to Chief Isaacson,  
5 the FBI agent that asked to speak with Dr. Kershner never  
6 identified what specifics were involved in the threat. We  
7 believe there was some mention of it being in the same vein  
8 as Jeff Bezos and some others, so.

9 Q Your Honor, if we could, this might be a good time  
10 to take a break so I could just review my notes and make sure  
11 I've covered everything I need to.

12 **THE COURT:** Okay, let's do that. We'll come back at --  
13 what time is it now? We'll come back at ten after 11.

14 **MR. COVERT:** Thank you.

15 **THE COURT:** Thanks.

16 (WHEREUPON, recess taken.)

17 (Open court:)

18 **THE CLERK:** We are back on the record for the  
19 continuation of the evidentiary hearing in case number  
20 23-CV-525, Kershner v. Kolison, et al.

21 All counsel and parties are present.

22 **MR. COVERT:** Thank you, your Honor.

23 First, an administrative matter.

24 In relation to Plaintiff's Exhibit 98 which has been  
25 entered into evidence, there's a redacted version that is on



Olivo - Direct - Covert

1 file at the ECF number 58. The parties have agreed that  
2 we're going to utilize that version for public purposes.

3 **THE COURT:** What's been redacted?

4 **MR. COVERT:** There's been redaction from the Camelot  
5 report of identifying information in relation to  
6 Mr. Kershner's Social Security number, date of birth --

7 **THE COURT:** Oh, okay.

8 **MR. COVERT:** -- address, things of that nature.

9 And there's also the attachment of the previously  
10 admitted memo in relation -- from March 25th of 2022 in  
11 relation to Mr. Kolison's security concerns. There was some  
12 personal identifying information in there, as well.

13 **THE COURT:** Yeah, that's --

14 **MR. COVERT:** They both --

15 **THE COURT:** It's all personal identifying information,  
16 is that right?

17 **MR. COVERT:** Yes.

18 **THE COURT:** That's fine, thank you.

19 **Q** Mr. Olivo, you also heard Mr. Isaacson testify in  
20 relation to forwarding the threatening emails and  
21 communications to law enforcement, in his opinion they would  
22 not be able to identify the individuals who sent those  
23 messages just from their email addresses, the names that are  
24 associated with those accounts, correct?

25 **A** Yes.

Olivo - Direct - Covert

1           Q     And this morning, the -- the defendants filed a  
2 amended exhibit list document 62 on ECF which lists a number  
3 of addresses from individuals who apparently sent concerning  
4 messages, correct?

5           A     Email addresses?

6           Q     Email --

7           A     Yes.

8           Q     -- addresses, yeah. And what did you do upon  
9 receipt of those email addresses in reviewing this document?

10          A     In this short period of time that we had, I  
11 utilized your computer to look up and identify those persons.

12          Q     And were you able to identify those persons  
13 including home addresses?

14          A     The ones that I ran, yes.

15          Q     Now, is it fair to state that in your role in the  
16 military, with the Cheyenne police, with the U.S.  
17 Marshals, and in now as a private investigator for some 22  
18 years providing security assessments and advice to various  
19 K through 12 campuses, universities and health care campuses,  
20 that your bias or your goal is always to protect the  
21 individuals that are under your custody if you're in the  
22 military or U.S. Marshals or that are on the campuses if it's  
23 for the various K through 12 and university and hospital  
24 campuses?

25          A     Yes.

Olivo - Direct - Covert

1           Q     It's always for the protection of others?

2           A     Yes.

3           Q     And are you personally familiar with the SUNY  
4 Fredonia campus?

5           A     Yes, I am.

6           Q     How often do you believe you've been on that  
7 campus?

8           A     Probably at least 50 times.

9           Q     Five zero times?

10          A     Yes.

11          Q     And have you spoken with -- in the past not in  
12 relation to this matter -- have you spoken with campus  
13 police?

14          A     I spoke with the former chief of police out there.

15          Q     Regarding security?

16          A     Yes.

17          Q     And why have you been on the SUNY campus some 50  
18 times?

19          A     Both of my daughters are alumni of SUNY Fredonia.

20          Q     In your professional opinion and your personal  
21 opinion given your ties to the campus, are you comfortable in  
22 advising the Court that if Mr. Kershner is returned to the  
23 campus under the alternative safety measures, at least for  
24 the short term that you've advised, that he would be able to  
25 do so safely in relation to his own safety, in relation to

Olivo - Cross - Pantzer

1 the campus officials and the students on campus?

2 A I do believe that if enhanced security measures as  
3 recommended were implemented, that Professor Kershner can be  
4 returned to campus.

5 Q And these are the measures that you testified to  
6 and those that you provided as attachment 9 to Exhibit 98  
7 which is your assessment report, correct?

8 A Correct.

9 Q Expert report.

10 MR. COVERT: Thank you. Nothing further.

11 CROSS-EXAMINATION BY MS. PANTZER:

12 Q Mr. Olivo, hi.

13 A Good morning.

14 Q My name's Alyssa Pantzer. I'm an assistant  
15 attorney general with the office of the New York State  
16 Attorney General. I'm going to ask you some followup  
17 questions.

18 First, you've never been the chief of campus police  
19 for a university, correct?

20 A Correct.

21 Q So you have no direct experience defending a  
22 college campus from security threats, is that true?

23 A I've never been a chief of police or a campus  
24 security director.

25 Q So, you testified that you've been on the SUNY

Olivo - Cross - Pantzer

1 Fredonia campus some 50 times; is that correct?

2 A (No audible response.)

3 Q Because -- that's a yes?

4 A Yes, both of my daughters were alumni.

5 Q Okay. And in, in going to the SUNY Fredonia  
6 campus, you didn't learn the geography intimately, did you?

7 A I could pretty much tell you, even though I can't  
8 name the buildings, I can tell you I've been on every inch of  
9 that campus.

10 Q You've been on every --

11 A I've been --

12 Q -- inch of the 250 acre campus?

13 A We've walked it, we've driven it. We've -- I've  
14 had dinner there many times and, yes, I've spent a lot of  
15 time there. I've been in the Rockefeller Arts Center at all  
16 hours of the day and night helping them build sets for  
17 theater and -- yes.

18 Q So you're aware that the campus is 256 acres?

19 A I wasn't aware exactly the size of the campus.

20 Q You weren't involved with the security assessments  
21 contemporaneously with Professor Kershner's appearance on the  
22 podcast, were you?

23 A No, I never conducted a security assessment  
24 regarding that.

25 Q And beyond the documents that you've been provided

Olivo - Cross - Pantzer

1 and the testimony that you've heard from Chief Isaacson, you  
2 have no personal knowledge of the measures that were taken to  
3 safeguard the campus in the days and weeks following  
4 Professor Kershner's appearance on the podcast, do you?

5 A Other than what I've been provided and Chief  
6 Isaacson's testimony, I do not.

7 Q You testified on direct with regard to the note  
8 that was left on Professor Kershner's office door, do you  
9 recall that testimony?

10 A Yes.

11 Q You testified -- you indicated in your testimony  
12 that there could have been further steps taken to investigate  
13 who placed that note on Professor Kershner's door; is that  
14 correct?

15 A Correct.

16 Q Do you even know whether there's cameras monitoring  
17 that area?

18 A I don't know that.

19 Q Okay. You also testified on direct that if you  
20 were sitting in Chief Isaacson's seat, you would have added  
21 armed guards, right? At the time?

22 A With respect to Professor Isaacson -- or, excuse  
23 me, Professor Kershner?

24 Q Yes.

25 A I would have enhanced security measures around

Olivo - Cross - Pantzer

1 Professor Kershner.

2 Q Right. You would have added guards?

3 A That's one of the components.

4 Q You would have asked for increased camera  
5 monitoring, right?

6 A Correct.

7 Q So there was, in your opinion, some threat, right?

8 MR. COVERT: I object. She's putting words in his  
9 mouth.

10 THE COURT: No. This is cross-examination, no.  
11 Overruled.

12 A If there were a credible, imminent and identifiable  
13 threat, I would have taken the steps to enhance security  
14 around Professor Kershner to include increased camera  
15 monitoring, providing an armed escort or armed guard service,  
16 and also enhancing a lockout or advising of a lockout  
17 position in his academic building.

18 Q Right. And you testified that's what Chief  
19 Isaacson should have done, didn't you?

20 A If there was an imminent and credible threat to  
21 provide -- for Professor Kershner to stay on campus, that  
22 would have been the steps I would have taken.

23 Q So, was there or wasn't there?

24 A Not that I know of. I've not been advised of any  
25 imminent or credible threat that existed.

Olivo - Cross - Pantzer

1           Q     Okay. And you feel that SUNY Fredonia did nothing  
2     in the days and weeks following Professor Kershner's  
3     appearance on the podcast to increase security; is that  
4     correct?

5           A     I don't see any evidence of the increased security,  
6     physical security.

7           Q     They didn't increase physical or tactical security,  
8     is that your testimony?

9           A     Correct.

10          Q     Okay. But they implemented preventative measures,  
11     didn't they?

12          A     What would that be?

13          Q     By removing Kershner from campus?

14          A     I don't know that that would be called preventative  
15     measures.

16          Q     You don't agree that that's a preventative measure?

17          A     I don't agree with it, no.

18          Q     But, at a minimum, you would agree that they did  
19     something in the moments, the days and weeks following the  
20     podcast appearance, right?

21          A     They did something, yes.

22          Q     And they also requested additional patrols at  
23     Professor Kershner's residence, right?

24          A     They advised the local law enforcement that  
25     Professor Kershner may be under a threat.



Olivo - Cross - Pantzer

1           Q     So that's yet another thing that they did to  
2     increase security following Professor Kershner's appearance  
3     on the podcast, correct?

4           A     They advised local law enforcement, yes.

5           Q     Okay. We've established that you're being paid to  
6     be here, right?

7           A     Yes.

8           Q     By plaintiff's attorneys?

9           A     Correct.

10          Q     At a rate of \$150 an hour?

11          A     Correct.

12          Q     And that's to rebut Chief Isaacson's testimony, is  
13     that your understanding?

14          A     No.

15          Q     Oh. It's not? You're not a rebuttal expert?

16          A     I'm here to provide an opinion as to what I have  
17     reviewed in terms of the evidence that was provided.

18          Q     Okay. You were never a special agent with the FBI?

19          A     Correct.

20          Q     You've also never been involved with the National  
21     Center for Analysis of Violent Crime?

22          A     Correct.

23          Q     You've also never undergone any rigorous training  
24     in the realm of behavioral threat analysis, is that correct?

25          A     That's correct.

Olivo - Cross - Pantzer

1 Q But you were a member of the U.S. Marshals?

2 A Correct.

3 Q And that was for about five years?

4 A Seven years.

5 Q Seven years. Mr. Olivo, your LinkedIn page says it  
6 was five years, your resume says it was six years, and you  
7 testified on direct it was seven years. So which -- which is  
8 it? I just want to nail that down.

9 A It was six years and some change, yes.

10 Q And that was approximately two decades ago, right?

11 A Yeah, yes.

12 Q And when you were involved with the U.S. Marshals,  
13 you participated in certain security details?

14 A Correct.

15 Q In doing so, you weren't the lead threat analyst  
16 for those security details, were you?

17 A I was not a threat analyst.

18 Q Right?

19 A Correct.

20 Q You were a member of the security detail but you  
21 weren't the lead threat analyst for those security details?

22 A So I think the nomenclature needs to be clear.

23 Q Okay. Go ahead.

24 A I was never a threat analyst. I was a team leader  
25 on providing security and protection details.

Olivo - Cross - Pantzer

1           Q     So you didn't engage in any threat analysis with  
2     regard to those security details?

3           A     We had a unit that did that.

4           Q     Okay. But not you?

5           A     Correct, me personally, no.

6           Q     Okay. And you've done threat assessments for  
7     universities it says in your report at Paragraph 6; is that  
8     correct?

9           A     We've done risk and threat analysis and security  
10    consulting for colleges, yes.

11          Q     And you testified on direct you've done it for five  
12    colleges; is that right?

13          A     Correct.

14          Q     Which are the five? We heard about D'Youville.  
15    What are the other four?

16          A     My clients have not given me permission to provide  
17    all that information. I mean, D'Youville is one that we can  
18    use but we have conducted consulting with other universities,  
19    yes.

20          Q     You're not permitted to disclose those other  
21    universities?

22          A     I would have to ask the client.

23          Q     Okay.

24          A     I can --

25          Q     But you did --

Olivo - Cross - Pantzer

1           A     -- give you names of school campuses and school  
2 districts that --

3           Q     We're going to get to --

4           A     -- we had.

5           Q     We're going to get to the K through 12 schools.  
6 I'm just asking about universities right now because your  
7 report indicates that you've done threat assessments for  
8 universities, plural. So I'm just trying to understand what  
9 universities you've done threat assessments for. But you're  
10 telling me that that's confidential information other than  
11 D'Youville, is that correct?

12          A     Just to be clear --

13          Q     Mm-hmm.

14          A     You're using threat assessments pretty broadly.  
15 Threat assessments are -- we've done security consulting for  
16 universities in collaboration with colleges.

17          Q     Okay. So, is it incorrect to say that you've done  
18 threat assessments for universities?

19          A     Full-scale threat assessments would not be  
20 accurate, correct.

21          Q     Okay. You testified on direct that you've worked  
22 with D'Youville, is that true?

23          A     Correct.

24          Q     D'Youville, are you aware, is 27 acres?

25          A     I'm not --

Olivo - Cross - Pantzer

1 Q Is that --

2 A I'm not aware of the size of the campus.

3 Q Does that sound approximately correct?

4 A It's a city university, so, sure.

5 Q And 24 of those acres, Mr. Olivo, are parking lots,  
6 are you aware of that?

7 A I am not aware of that.

8 Q So it doesn't really compare to SUNY Fredonia's  
9 256-acre campus, right?

10 A In size, you're correct.

11 Q Okay. Also, D'Youville only has 15 buildings, are  
12 you aware of that?

13 A I'm not aware the exact amount of buildings but if  
14 you say so.

15 Q Compared to Fredonia's 63?

16 A Okay.

17 Q Okay. So, again, not, not super comparable he  
18 those two campuses, right?

19 A Correct.

20 Q You testified on direct that you're a member of the  
21 National Association of Threat Assessment Professionals?

22 A Correct.

23 Q And that's called ATAP, right?

24 A No.

25 Q Oh, I'm sorry, what's it called. I thought that

Olivo - Cross - Pantzer

1 was --

2 A The National --

3 Q -- their acronym?

4 A -- Association of Threat Assessment Professionals  
5 is different than ATAP. It's a -- it's a different  
6 organization.

7 Q The National Association of Threat Assessment  
8 Professionals is different than ATAP. You know, I couldn't  
9 find a different website. Is there a separate website?

10 A I could probably find it but it's actually --  
11 there's a LinkedIn group. There's a website for it.

12 Q How is it different from ATAP?

13 A Because to become a member of -- there's different  
14 credentialing process. I don't need to go through a  
15 credentialing process to be an organizational member of the  
16 National Association of Threat Assessment Professionals, like  
17 I did for the other credentials I have.

18 Q Okay. So you didn't have to be credentialed to  
19 join the organization National --

20 A Correct.

21 Q Okay. You're a partner with Corporate Screening  
22 and Investigations LLC; is that correct?

23 A Corporate Screening and Investigative Group, LLC.

24 Q And -- so as a partner, do you own the company or  
25 do you have other partners?

Olivo - Cross - Pantzer

1           A     I have a partner, yes.

2           Q     Okay.

3           A     We're part owners, both owners.

4           Q     And it's got locations in Fort Meyers, as well as  
5 locally, right?

6           A     Correct.

7           Q     And you worked on the installation of facial  
8 recognition technology at Lockport City School District in  
9 conjunction with your work with CSI; is that correct?

10          A     I did not work on the installation of it. I worked  
11 on consulting with the school district, as well as the  
12 developers of the technology.

13          Q     Well, you're involved with -- yeah, right. You're  
14 involved with SN Technologies, right?

15          A     I was a consultant for SN Technologies, correct.

16          Q     You gained financially from working with SN  
17 Technologies?

18          A     I was paid as a consultant to help them develop the  
19 technology for use in schools.

20          Q     And you helped implement it at Lockport City School  
21 Districts, isn't that true?

22          A     I did not implement the technology. I helped  
23 consult with the Lockport City School Districts with respect  
24 to the technology.

25          Q     You encouraged them to use it, right?

Olivo - Cross - Pantzer

1           A     I advised them that they -- they actually helped us  
2 develop the technology.

3           Q     The school district helped you develop the  
4 technology?

5           A     Yes.

6           Q     And that cost about 1.4 to \$2.75 million to  
7 implement at Lockport, right?

8           A     That includes the upgrade to all of their camera  
9 systems.

10          Q     But that number is correct, 1.4 to 2.75 million?

11          A     I -- that's, yes, it's somewhere in that  
12 neighborhood.

13          Q     And your company, CSI gained financially from that  
14 deal, didn't it?

15          A     We were paid as consultants to help them develop  
16 the technology.

17          Q     But you earned around \$95,450 annually for five  
18 years based on that deal, right, correct?

19          A     That is not correct.

20          Q     That's not correct?

21          A     That is not correct.

22          Q     What did CSI gain financially from that deal?

23          A     CSI made approximately -- between 2015 and the time  
24 that that technology was implemented in Lockport as  
25 consultants for AEGIS or SN Technologies, CSI made about



Olivo - Cross - Pantzer

1 \$142,000.

2 Q In total?

3 A In total.

4 Q Okay. I want to turn now to your recommendations  
5 for handling the threat in this case. Let's start with the  
6 access control.

7 You recommend that on all of the doors on the  
8 Fredonia campus, right, key fob access?

9 A So I just need to be clear, okay. You're saying  
10 handling the threat. Can you tell me what the threat is.

11 Q Well, I'm -- I'm sorry for the nomenclature.

12 A That's okay.

13 Q I'm just going to talk about your recommendations  
14 in this case.

15 A Okay.

16 Q So I think it's Paragraph 34 of your expert report  
17 and Exhibit B to your first disclosure, okay. We can refer  
18 to the paragraph if you want. Would that be helpful?

19 A Sure.

20 Q Okay.

21 **THE COURT:** What are we looking at now?

22 **MS. PANTZER:** The expert rebuttal report at Paragraph  
23 34.

24 **THE COURT:** So this is Exhibit 98?

25 **MS. PANTZER:** Yes, your Honor.

Olivo - Cross - Pantzer

1           **MR. BOYD:** Subject to be swapped out for the redacted  
2 version.

3           **THE COURT:** I'm sorry.

4           **MR. BOYD:** Subject to being swapped out for the redacted  
5 version for public viewing, as we discussed previously.

6           **THE COURT:** Yep, Thank you.

7           A       So I have it. And, again, we're talking about  
8 mitigating the risk or any legitimate security concerns not a  
9 threat. The threat would have been something that would have  
10 been identifiable at the time.

11          **Q**       Okay. So, minimizing the risk for any legitimate  
12 security concerns. You agree that there's a legitimate  
13 security concern here?

14          A       If there's one identified.

15          **Q**       So these recommendations are hypothetical?

16          A       To mitigate any legitimate security concerns. If  
17 there is an identified security concern, these would be the  
18 steps that we would recommend to mitigate that.

19          **Q**       Didn't you testify on direct that if Professor  
20 Kershnar comes back on campus, these are the steps that you  
21 would recommend?

22          A       Well, I testified -- can I read them all or -- but  
23 these are, these are the steps, yes, mine --

24          **Q**       Yes. So the answer is yes?

25          A       I, I testified as to the steps in the financial

Olivo - Cross - Pantzer

1 outline so if there is more that --

2 Q If you want to -- we can go to that instead.

3 Exhibit B to the witness summary.

4 A I just didn't know if there was more in here than  
5 was in the other document.

6 Q There are --

7 A Okay.

8 Q There are far more in this expert disclosure but  
9 this is your most recent expert disclosure?

10 A Okay.

11 Q And you signed it. We went over that on direct?

12 A Right.

13 Q So these are the steps that you would recommend if  
14 Professor Kershnar comes back on campus, right?

15 A Yes.

16 Q Okay. So, let's start with access control. And  
17 this is actually in and around your report at Paragraph 40.

18 MS. PANTZER: Jenna, if you want to scroll.

19 Q So does, so I'm -- does that orient you to where  
20 I'm going here, Mr. Olivo?

21 A Yes.

22 Q Okay. All right. So, like I said, you would  
23 recommend key fob access on all of the doors on SUNY  
24 Fredonia's campus; is that right?

25 A Well, my recommendation would be, yes.

Olivo - Cross - Pantzer

1           Q     Okay. Are you aware of how many doors there are on  
2     SUNY Fredonia's campus?

3           A     I am not.

4           Q     Would it surprise you to hear that there's  
5     thousands of doors on SUNY Fredonia's campus?

6           A     Exterior entrance doors?

7           Q     Yes.

8           A     There's thousands --

9           Q     And interior, and interior?

10          A     Well, no, I'm not talking about interior. So you  
11     said there's 63 buildings, so however many exterior entrance  
12     doors there are in addition to 63 buildings, many of them  
13     already have it in place so you'd have to eliminate those.  
14     So however many exterior entrance doors there are times the  
15     buildings that don't already have them would be my  
16     recommendation.

17          Q     So you're only recommending key fob access control  
18     to the exterior doors of the campus buildings?

19          A     Because there's been enhanced locking mechanisms  
20     and high security locks put into the interiors of the  
21     building.

22          Q     That was not my question. I'm going to repeat just  
23     because I want to make sure I understand.

24                 You're only recommending key fob access to the  
25     exterior doors of the campus -- of the 63 campus buildings;

Olivo - Cross - Pantzer

1 is that correct?

2 A Well, in a perfect world the whole campus, yes, but  
3 in this circumstance I'm referring to where Professor  
4 Kershner's going to be.

5 Q Okay. So the entire campus or only where Professor  
6 Kershner's going to be?

7 A In a circumstance where we would bring professor  
8 back on to campus and provide for his security, I'm  
9 recommending that these access control measures be placed in  
10 the building or buildings that he is going to be in.

11 Q And only the exterior doors of those buildings?

12 A Again, because my understanding is that there were  
13 high security interior locks placed in those buildings  
14 already.

15 Q What's your understanding based on?

16 A Based upon Chief Isaacson's testimony and the  
17 \$500,000 security upgrades that the campus made to those  
18 locking mechanisms.

19 Q Okay. So, just to be clear, you are only  
20 recommending key fob access control to the exterior entrance  
21 of the buildings where Professor Kershner is going to be?

22 A Correct.

23 Q Okay. What about the students who are not in the  
24 same building as Professor Kershner at any given time?

25 A I don't understand.

Olivo - Cross - Pantzer

1           Q     Okay. Well --

2           A     Are we looking at -- I was asked to --

3           Q     Let's say there's --

4           A     -- provide an opinion.

5           **THE COURT:** One at a time. One --

6           A     -- regarding --

7           **THE COURT:** -- at a time.

8           A     -- Professor Kershnar's security or a circumstance  
9     for bringing Professor Kershnar back on to campus. If you  
10    want to consider an analysis for all the student populous as  
11    well as the staff of SUNY Fredonia, I have not done that but  
12    I'm happy to opine on it.

13          Q     Well, you understand that it's Professor -- or, I'm  
14    sorry, it's Chief Isaacson's opinion that the entire campus  
15    community is at risk if Professor Kershnar is brought back,  
16    right?

17          A     I believe that's his opinion.

18          Q     Right. So my question to you is this: If there's  
19    only key fob access doors on the buildings where Professor  
20    Kershnar is located, how do we protect the students who  
21    aren't in the same building as Professor Kershnar?

22          A     You can put the same enhanced security measures on  
23    the entire campus.

24          Q     Okay. So you are recommending key fob access on  
25    all of the doors of the campus?

Olivo - Cross - Pantzer

1           A     I don't believe that's what I said.

2           Q     Well --

3           A     If you're asking me an opinion regarding the campus  
4 overall and security all of the students on the campus, my  
5 opinion would be to lock down all of the buildings and  
6 provide key fob access. Now there's already that access on  
7 those doors. They're just not set to lock until 10 o'clock  
8 at night, and I can testify to that personally because my  
9 daughters were in these buildings late at night and the doors  
10 weren't locked. And that was --

11          Q     Okay.

12          A     -- a concern I actually brought up to the chief of  
13 police many years ago.

14          Q     All right. So your recommendation is to put key  
15 fob access -- and so your testimony is that there's already  
16 key fob access on all of the doors that you're recommending?

17          A     Not on all the doors. I'm saying for the most  
18 part, these buildings -- so, for instance, the residence  
19 halls, those already have them. The --

20          Q     Dorms?

21          A     The dorms. The Rockefeller Arts Center has it  
22 already. It's just not utilized. So if you want to secure  
23 the campus and you want to secure the students on that  
24 campus, you can utilize the systems that they already have in  
25 place. And, in fact, I would recommend that --

Olivo - Cross - Pantzer

1           Q     Okay.

2           A     -- whether there's a threat to Professor Kershner  
3     or not.

4           Q     Okay. So key fob access on all of the doors to all  
5     of the academic buildings on campus, that's the  
6     recommendation?

7           A     That's one of them.

8           Q     Okay. Do you have any idea how many doors that  
9     would be?

10          A     I do not.

11          Q     Would it surprise you if I told you it would be  
12     thousands of doors?

13          A     We've already established that there's 63  
14     buildings. I don't know how many of them would be academic  
15     buildings. So I'd have to extrapolate from there. And I  
16     don't know how many of them already have those readers on  
17     them.

18          Q     And the cost is \$2,000 per door, right?

19          A     If there needed to be a full installation, that is  
20     the retail cost.

21          Q     And let's just say we only need to add this  
22     mechanism to 500 additional doors, okay, that's about a  
23     million dollars, right?

24          A     If -- I don't know that you needed to add it to 500  
25     exterior doors.



Olivo - Cross - Pantzer

1           **Q**     Hypothetically. That --

2           **A**     Well, I'm just trying to extrapolate from --

3           **MR. COVERT:** I object to hypothetical statement.

4           **THE COURT:** Sustained.

5           **A**     I'm just trying to extrapolate, given that there's  
6     63 buildings on campus and we already know that dormitories,  
7     the Rockefeller Arts Center, I'm assuming the police  
8     department, the administrative building, all of these  
9     buildings already have them in place, that I would say -- I  
10    would submit to you that there's probably a lot less doors  
11    than you realize that would need to add this system.

12          **Q**     Mr. Olivo, you don't know how many doors would need  
13    to add this system?

14          **A**     Well, if there's 63 buildings --

15          **Q**     You don't know, though, sir, right, you have no  
16    personal knowledge?

17          **A**     You just --

18          **Q**     You're assuming?

19          **A**     -- told me --

20          **MR. COVERT:** I ask that he be permitted to answer his --  
21    finish his answer.

22          **A**     You just told me that there's 63 buildings on  
23    campus. Given the fact that there's 63 buildings on  
24    campus -- and I do know for a fact that several of these  
25    buildings have these readers in place already -- so we'd have

Olivo - Cross - Pantzer

1 to deduct however many buildings that is and however many  
2 doors.

3 So from that, if we're going to secure the entire  
4 campus with the same system, it would just need to be added  
5 on to whatever doors that were needed to be added on that  
6 didn't have it already.

7 Q Okay. You understand that this is an open campus,  
8 right?

9 A Yes.

10 Q It's a SUNY school?

11 A Yes.

12 Q Owned by the state?

13 A Yes.

14 Q Okay. You can't control access to the entire  
15 campus --

16 A Correct.

17 Q -- right? Okay. And this strategy, access  
18 control, it just hardens the target, right, it doesn't  
19 prevent the violence?

20 A That is correct.

21 Q Okay. And you have a lot of experience assisting  
22 with K through 12 schools, isn't that true?

23 A Correct.

24 Q Okay. You agree with me that a college campus is  
25 very different than a K through 12 school?

Olivo - Cross - Pantzer

1 A Yes.

2 Q Students in a K through 12 school don't have the  
3 ability to roam freely throughout the campus, do they?

4 A Not for, not for most school districts.

5 Q And usually there's one access point to a K through  
6 12 school, isn't that true?

7 A That is not true.

8 Q How many access points are there typically in a  
9 K through 12 school?

10 A Depends on the size of the school district.

11 Q Well, at a min -- okay. So we're just be -- let's  
12 just take a high school, one high school. There's usually  
13 one access point available during the day to people who  
14 aren't typically at that school, isn't that true?

15 A In a visitor entrance?

16 Q A visitor entrance?

17 A Yes.

18 Q Yes?

19 A There's usually one single point of entrance for a  
20 visitor. That's what we recommend.

21 Q And a visitor coming to the school is screened  
22 typically before entering, aren't they?

23 A We really hope so, yes.

24 Q They sometimes have to present a driver's license?

25 A Yes.

Olivo - Cross - Pantzer

1           Q     They sometimes need a little badge that allows them  
2 to traverse the property while they're visiting, right?

3           A     (No response.)

4           Q     A badge that they're provided or like a little, you  
5 know, tag?

6           A     Something to identify them as a visitor.

7           Q     Exactly. That's what I'm talking about. That's  
8 quite typical in a K through 12 setting, isn't it, for a  
9 visitor?

10          A     A single point of entry, identification be required  
11 upon entry, that is the recommended protocol, correct.

12          Q     That's impossible on a college campus, isn't it?

13          A     It is.

14          Q     So in your report at Paragraph 55 where you state  
15 that K through 12 schools are able to, quote, effectively  
16 exclude everyone from the building besides students and  
17 staff?

18          A     (No response.)

19          Q     That's not really relevant here, is it?

20          A     Well, we didn't read the whole thing. If I may.  
21 Where they're able to exclude everyone from the building  
22 besides students and staff because a threat was made to the  
23 school.

24          Q     Right.

25          A     And that's called a lockout. So they're able to do

Olivo - Cross - Pantzer

1 that in a K through 12 school. If they --

2 Q You can't do that on a college campus, though?

3 A Well, I would hope if there was an active threat  
4 made to SUNY Fredonia where somebody says I'm coming to kill  
5 you or posted something online with a video with them holding  
6 a gun threatening to kill people on campus, that they would  
7 enhance their security measures and go to a lockout  
8 circumstance.

9 Q But they can't exclude everyone from a 256-acre  
10 campus, can they?

11 A They can't exclude them from coming on campus but,  
12 per Chief Isaacson's testimony, they are trying to make their  
13 academic buildings similar to a K through 12 building. So if  
14 that's the goal and that's what they would like to do and  
15 that's the standard, they can secure that campus in the same  
16 manner a K through 12 building can be --

17 Q Right.

18 A -- secured.

19 Q They can potentially secure some of the buildings  
20 but they can't secure the entire 256 acre property, sir?

21 A Oh, no, not without putting up a wall.

22 Q Right?

23 A Or --

24 Q Exactly. Or barbed wire, right?

25 A Yeah.

Olivo - Cross - Pantzer

1           **Q**     Okay. And with this additional access control that  
2     you're recommending, you would agree there's going to be some  
3     disruption, right?

4           **A**     In terms of?

5           **Q**     What if a student forgets their key fob? What if a  
6     student wants to hold the door for the student behind them?  
7     This is an open campus. Would you agree that it's going to  
8     cause some disruption if every single door is locked by key  
9     fob access only?

10          **A**     Well, if the student forgets the key fob, then they  
11     couldn't get back into their dormitory, either, so that would  
12     raise an issue. So you'd have to get access to the dorm or  
13     wherever else they were going to need that fob for. So that  
14     would be an issue -- it's probably an issue that exists  
15     today. As far as what you describe, someone holding a door  
16     open -- it's called piggybacking -- yes, that's a concern.  
17     It's a concern in K through 12. It's a concern on college  
18     campuses where there's secure environments, it is a concern.

19          **MS. PANTZER:** Your Honor, we have ten minutes until you  
20     wanted to take a break. I'm about to start another section,  
21     do you want me to --

22          **THE COURT:** We can break now. Are you asking to break  
23     now?

24          **MS. PANTZER:** Well, if it's convenient -- yeah, sure,  
25     yes.

Olivo - Cross - Pantzer

1       **THE COURT:** Okay.

2       **MS. PANTZER:** I mean, I'm about to start another section  
3 so I feel like --

4       **THE COURT:** We'll break now.

5       **MS. PANTZER:** Okay, thank you, your Honor.

6       **THE COURT:** Why don't you folks come back at quarter to  
7 2. I may be done by then. I may not be done by then. But  
8 if I'm done, we can resume because I'll be in the courtroom  
9 then, okay.

10       **MR. COVERT:** Thank you, your Honor.

11       **THE COURT:** Anything we need to put on the record before  
12 we break from the plaintiffs?

13       **MR. COVERT:** No, your Honor.

14       **THE COURT:** From the defendants?

15       **MS. PANTZER:** No, your Honor.

16       **THE COURT:** Okay. We'll see you folks at quarter of 2.

17       (WHEREUPON, recess taken.)

18       (Open court:)

19       **THE CLERK:** We are back on the record for the  
20 continuation of the evidentiary hearing in 23-CV-525,  
21 Kershner v. Kolison, et al.

22       All counsel and parties are present.

23       **THE COURT:** Okay. I remind the witness that he's still  
24 under oath and you may continue.

25       **MS. PANTZER:** Thank you, your Honor.

Olivo - Cross - Pantzer

1           Q     Mr. Olivo, we're going to continue working through  
2 your recommendations in this case.

3                     Were Kershner to -- I'm sorry, were Dr. Kershner to  
4 return to campus. I think your next suggestion is  
5 potentially armed guards to protect Dr. Kershner; is that  
6 correct?

7           A     Or providing police escorts, yes.

8           Q     Okay. You're not familiar with the Taylor Law, are  
9 you?

10          A     (No response.)

11          Q     The Taylor Law?

12          A     (No response.)

13          Q     Union rules for state employees?

14          A     No.

15          Q     Okay. What about the labor rules in New York  
16 State, you're not familiar with those either, are you?

17          A     I'm ...

18          Q     No, okay.

19          A     No.

20          Q     Are you aware that the SUNY police force is  
21 unionized?

22          A     I would imagine they would be.

23          Q     And the terms and condition of their employment is  
24 covered by union contract with the state, you understand  
25 that?



Olivo - Cross - Pantzer

1           A     If you say so.

2           Q     Okay. And if the state were to employ armed guards  
3 for Dr. Kershner, they would have to negotiate outside of the  
4 contract; do you understand that?

5           A     I'm not familiar with what their --

6           Q     Okay.

7           A     Collective bargaining agreement says or any of  
8 their contract.

9           Q     Okay. You would agree that many kids first time  
10 away from home is when they go to college, right?

11          A     Or the military, yes.

12          Q     Right. Your daughters' first time away from home  
13 was --

14          A     Yes.

15          Q     -- going to SUNY Fredonia? So being on campus,  
16 first time away from home with armed guards roaming around  
17 might be a little frightening, right?

18          A     Are you saying that I suggested that armed guards  
19 roam around?

20          Q     Well, okay. Even having armed guards protect  
21 Kershner might be a little frightening for kids first time  
22 away from home, right?

23          A     Well, they are -- they have armed police officers  
24 already on campus.

25          Q     Right. But specific to Professor Kershner could

Olivo - Cross - Pantzer

1 frighten students of his, right?

2 A There --

3 Q To see armed guards protecting him?

4 A There would be a methodology where a plainclothesed  
5 armed officer agent would be able to protect him.

6 Q Okay. But you suggest armed guards only for  
7 Dr. Kershnar, right?

8 A In this circumstance I suggested one of the  
9 methodologies for mitigating a risk to Dr. Kershnar would be  
10 to provide an armed escort for him, yes.

11 Q Right. Mitigating the risk only to Dr. Kershnar,  
12 right?

13 A Correct.

14 Q Not to the students?

15 A That would be what the campus police are there to  
16 do.

17 Q Right. But the campus police aren't armed guards  
18 watching over the students all day, right?

19 A They are armed police officers watching over the  
20 entire campus population all day.

21 Q Okay. But back to your suggestion: Only for  
22 Dr. Kershnar, right, the armed guards would only be for him?

23 A In this circumstance as one of the methodologies  
24 for bringing Dr. Kershnar back to campus, I recommended an  
25 armed guard or a police officer be with him, yes.

Olivo - Cross - Pantzer

1           Q     Okay. Not for the president?

2           A     No.

3           Q     Not for any of the other administrators or  
4 decision-makers on SUNY Fredonia's campus, right?

5           A     I did not recommend that, no.

6           Q     Okay. And not for anyone else who received threats  
7 here, just Dr. Kershner, right?

8           A     Dr. Kershner was allegedly the target of the  
9 threats.

10          Q     Well, there was evidence presented with Chief  
11 Isaacson that there were threats to the campus community as a  
12 whole, right?

13          A     I don't recall that.

14          Q     Okay. We'll show you some down the line a little  
15 bit. But there was also evidence presented with Chief  
16 Isaacson that there were threats made to administrators,  
17 including the President, right?

18          A     To my recollection, there was a concern by the  
19 President of him contacting Chief Isaacson regarding his  
20 concern for his security, if that's what you're referencing.

21          Q     What about the threat that we presented into  
22 evidence, Exhibit 27, a voicemail stating: I'd like to,  
23 quote, punch the President in the F'ing face and we're coming  
24 for you, that's a threat to the President, isn't it?

25          A     I would consider that as a threat to the --

Olivo - Cross - Pantzer

1 Q But --

2 A -- president.

3 Q You don't suggest armed guards for the President,  
4 just for Dr. Kershner?

5 A Well, Chief Isaacson didn't take that threat  
6 seriously obviously because he didn't increase any security  
7 with respect to Mr. Kolison.

8 Q That wasn't my question. My question was whether  
9 or not you suggested any armed guards for the President based  
10 on that threat?

11 A I did not.

12 Q Okay. You also suggested stationing an armed guard  
13 outside of Dr. Kershner's classroom, right?

14 A In the hallway, yes, in the vicinity of his  
15 classroom.

16 Q That also would do nothing to protect students who  
17 aren't in Dr. Kershner's immediate vicinity; is that right?

18 A It would enhance security only for the students  
19 within Dr. Kershner's classroom or immediately in his  
20 vicinity.

21 Q So that's a yes to my question, does nothing to  
22 protect the students outside of Dr. Kershner's immediate  
23 vicinity, that's a yes?

24 A I can't just answer that yes or no. Because,  
25 again, the scope here is with respect to Dr. Kershner and

Olivo - Cross - Pantzer

1     securing him in this environment. The campus police are  
2     responsible for security of the entire student population, as  
3     well as the rest of the people on the campus. So, that would  
4     already be in existence, if that's what you're asking.

5           Q     Well, again, you were here for Chief Isaacson's  
6     testimony --

7           A     Correct.

8           Q     -- right? And he testified that he has a concern,  
9     in his opinion, the entire campus community is threatened by  
10    Dr. Kershner's return to campus, you heard him testify to  
11    that, right?

12          A     I understand that that is his concern.

13          Q     Right, okay. You also suggested hiring off-duty  
14    police officers; is that right? In your report?

15          A     Yes.

16          Q     And that's at Paragraph 42. If you need to see.  
17                 Off-duty police officers would only be necessary  
18    while Dr. Kershner's on campus in your opinion?

19          A     Correct.

20          Q     Okay. And, again, what about the students on  
21    campus when Dr. Kershner isn't? This measure would do  
22    nothing to protect them, right?

23          A     And, again, that's what campus police are there  
24    for.

25          Q     So it's your contention that the campus police, the

Olivo - Cross - Pantzer

1 SUNY Fredonia campus police, two to three officers on duty at  
2 any one time can protect a campus of 3,000 students and 256  
3 acres by themselves?

4 A If you're asking --

5 Q In this heightened risk environment? Is that your  
6 testimony?

7 A When you say a heightened risk environment, can you  
8 tell me exactly what you're speaking of in terms of a  
9 credible or imminent threat.

10 Q Well, you suggested certain security measures if  
11 Dr. Kershner were to return to campus?

12 A Correct.

13 Q Armed guards for Dr. Kershner, right, further  
14 access control on doors?

15 A Correct.

16 Q Okay. So, in that environment, in that height --  
17 obviously you believe that there's a heightened risk, right,  
18 because you're suggesting additional security measures for  
19 Dr. Kershner if he were to return?

20 A I don't believe that at all.

21 Q So the heightened risk is only for Dr. Kershner, in  
22 your opinion?

23 A No. I'm saying that I don't see any evidence that  
24 there is a heightened risk or credible threat. That is an  
25 opinion that was rendered by Mr. Isaacson when there is no

Olivo - Cross - Pantzer

1 credible, imminent or likely threat that has been tendered  
2 with respect to this issue.

3 Q But you testified earlier before lunch that if  
4 Dr. Kershner were to return to campus, the items in  
5 Paragraph 34 of your report would be necessary, right?

6 A I --

7 Q That's what you testified to before lunch, Mr.  
8 Olivo.

9 A I don't believe I said that they would be  
10 necessary. I would say that they are suggested as a  
11 heightened security measure.

12 Q In light of a heightened risk?

13 A I did not say that.

14 Q Okay. In your work serving as security detail --  
15 helping with security detail for certain prominent  
16 individuals that you mentioned in your report, it's important  
17 for the protected individual to be cooperative with his  
18 detail, isn't it?

19 A The answer is yes and no. I mean, there are  
20 circumstances where we have protected high risk and high  
21 threat prisoners that weren't always necessarily cooperative.  
22 But, in general, a protectee, yes, it would be preferable if  
23 they were cooperative with the protective detail.

24 Q You'd want to know about any threats that were  
25 issued to them, wouldn't you?

Olivo - Cross - Pantzer

1 A Preferably.

2 Q So, that leads me to my next point. You also  
3 suggested that Dr. Kershner should just use the Rave app,  
4 right, which will notify local police when Mr. Kershner  
5 activates it; is that correct?

6 A I never suggested that.

7 Q Oh. Okay, let's turn to Paragraph 34 of your  
8 report, the ninth bullet.

9 Right there, Jenna.

10 And again, this is the report you signed, right?

11 A (No response.)

12 Q Mr. Olivo.

13 A Yes.

14 Q Okay. So I'm going to read the ninth bullet for  
15 you, temporarily moving -- I'm sorry, next one, instructing  
16 Kershner to download and use the Rave guardian app, did I  
17 read that correctly?

18 A That is in that report, yes.

19 Q Okay. So --

20 A I, I --

21 Q -- you did suggest --

22 A I apologize. I thought you meant in terms of my  
23 testimony.

24 Q That's okay. I understand.

25 So you did suggest that Dr. Kershner implement



Olivo - Cross - Pantzer

1 usage of the Rave app to mitigate his security risk, correct?

2 A That is one of the tools that are available, yes.

3 Q Okay. And, again, the app, the usage of the app by  
4 Dr. Kershner, again, that only protects him, right?

5 A Correct.

6 Q Okay. And you would require, if it were -- if you  
7 were Chief Isaacson and you were asking Dr. Kershner to use  
8 the Rave app, you would require him to use the app, right?

9 A I would suggest that he use it.

10 Q And it would be helpful if he cooperated with that  
11 suggestion, right?

12 A It would, it would enhance his personal security.

13 Q So you're aware that Dr. Kershner received  
14 threatening communications but failed to report them to Chief  
15 Isaacson, right?

16 A I did not have knowledge of that.

17 Q You were --

18 A For his --

19 Q -- here for Chief Isaacson's testimony, right?

20 A Yes.

21 Q You don't recall him testifying that Dr. Kershner  
22 failed to provide his threatening communications to Chief  
23 Isaacson?

24 A I don't know. I mean, I understand that he may  
25 have failed to provide them. I don't know that I have any

Olivo - Cross - Pantzer

1 details with respect to those threats.

2 Q You also suggested moving Dr. Kershner's classes  
3 and office locations to areas that are not publicly  
4 disclosed, right?

5 A That would be one way.

6 Q Okay.

7 A Yes.

8 Q Once again, not to sound like a broken record,  
9 that's just for the protection of Dr. Kershner, right?

10 A To mitigate the threat and risk to Dr. Kershner,  
11 yes.

12 Q Okay. Some people, you would agree, would have to  
13 be notified of the location of Dr. Kershner's office, right?

14 A Oh, yes.

15 Q His students would have to know where his office  
16 was?

17 A Correct.

18 Q And some people would have to be notified of where  
19 his classes are, right?

20 A Correct.

21 Q His students predominantly?

22 A Correct.

23 Q So that information can't be completely private?

24 A Well, when I -- when it mentions the location that  
25 is not publicly disclosed, I meant that it was not provided

Olivo - Cross - Pantzer

1 on social media or on the website, or Facebook pages, those  
2 type of things.

3 Q You also suggest additional security camera  
4 monitoring; is that correct?

5 A Correct.

6 Q Okay. You disagree with Chief Isaacson that  
7 cameras aren't preventative?

8 A I, I do not disagree with Chief Isaacson with  
9 respect to the proactive utilization of cameras if they are  
10 properly monitored. However, it is probably not able -- one  
11 person is not able to monitor 300 cameras. However, if  
12 there's an enhanced directive to monitor certain cameras,  
13 that would allow it to be monitored on a consistent basis.

14 Q Okay. So you agree with Chief Isaacson that  
15 cameras are not preventative?

16 A They can be preventative in the right circumstance.

17 Q And that's because you feel that cameras can be  
18 used to identify weapons, right?

19 A No, cameras can be used to identify many different  
20 things in terms of threats. Chief Isaacson, himself,  
21 actually testified to looking into various technologies for  
22 proactive utilization of camera systems which I agree with.  
23 There are technologies out there that would allow cameras to  
24 be utilized to identify vehicles that aren't supposed to be  
25 there, people that aren't supposed to be in certain

Olivo - Cross - Pantzer

1 locations, weapons, all of those things.

2 Q Right. So one of the things that cameras can be  
3 used for is identifying weapons, in your opinion; is that  
4 correct?

5 A If the camera or the naked eye can see it, yes, but  
6 they can't identify a weapon that's concealed.

7 Q So you're aware that you -- you state in your  
8 report at Paragraph 38, please, Jenna, quote, "If someone  
9 pulled a gun from their car and began walking toward a campus  
10 building, camera systems would alert officers who would then  
11 be able to respond"; is that correct?

12 THE COURT: 38, that's what you said.

13 UNIDENTIFIED SPEAKER: 38, yeah.

14 Q The last sentence.

15 A Well, the last sentence does say that but the  
16 sentence before that says that there are certain  
17 software-based technologies, as I just testified to, that  
18 help make camera systems proactive instead of reactive.

19 Q Right. So but what if a person pulled a gun out of  
20 their car and immediately began shooting, the camera couldn't  
21 do anything then, right?

22 A The camera would identify the weapon and send an  
23 alert.

24 Q Right. But people would already be dead, right?

25 A I can't say that yes or no.

Olivo - Cross - Pantzer

1           Q     But there's a lag time, right, between the time  
2     that a weapon or violence is detected on a camera and the  
3     time when someone, police or otherwise, can respond, there's  
4     a lag time, isn't there?

5           A     There would be a lag time from the time a weapon is  
6     identified until the police get there, yes.

7           Q     Right. You're aware that SUNY Fredonia has a large  
8     music school, right?

9           A     Oh, yes.

10          Q     And so what if a gun was in a cello case, the  
11     camera wouldn't be able to detect it, would it?

12          A     No, but it wouldn't be a threat inside of a cello  
13     case.

14          Q     It would be a threat as soon as it was pulled out  
15     of the cello case, wouldn't it?

16          A     It would have to be in hand.

17          Q     Okay.

18          A     And once it is in hand, then the camera could  
19     identify it.

20          Q     But then there's a lag time, right, between the  
21     time that the gun is in hand and the time when someone can  
22     respond to protect the situation, right?

23          A     Presumably, yes.

24          Q     And the same with a bass case or trombone case, the  
25     camera wouldn't be able to detect the weapon in any of those

Olivo - Cross - Pantzer

1 items, right?

2 A Correct, if the weapon is concealed, no, it would  
3 not be able to detect that.

4 Q And this is a college campus, right, so students  
5 carry backpacks, right?

6 A Yes.

7 Q And if a kid carries a sawed-off shotgun in a  
8 hockey bag, it's not going -- the camera's not going to stop  
9 the kid from doing so, is it?

10 A It would not stop the kid from concealing a weapon  
11 in a hockey bag.

12 Q And would you agree with Chief Isaacson that a mass  
13 shooting is approximately -- an average mass shooting is  
14 approximately 12 minutes long based on the data?

15 A That sounds accurate.

16 Q Isn't it true that in even one minute, Mr. Olivo,  
17 many, many people can be killed?

18 A That are.

19 Q Okay. So all that camera monitoring really is  
20 going to do is allow the person monitoring the cameras to  
21 witness some of the shooting, right?

22 A No, that's not correct.

23 Q Well, maybe it would cut a few minutes off the  
24 attack, right?

25 A (No response.)

Olivo - Cross - Pantzer

1           Q     But it wouldn't prevent the attack, would it?

2           A     Again, we're talking hypotheticals. So, for  
3 instance, if an active shooter were to retrieve a let's use  
4 the popular AR15 from their vehicle in a parking lot and  
5 start walking through the parking lot to a building and that  
6 weapon was picked up on a camera system, that sent an alert  
7 to the dispatcher. That sent alert would automatically go to  
8 the responding officer's patrol cars. From my understanding  
9 in talking with the former chief of police at SUNY Fredonia,  
10 the average response time on SUNY Fredonia is three minutes  
11 so it would mitigate that situation.

12          Q     Talking with the former chief of police for SUNY  
13 Fredonia, who are you talking about?

14          A     Ann Burns.

15          Q     Who?

16          A     Ann Burns.

17          Q     Ann Burns?

18          A     Right. She was the chief of police there when my  
19 daughters went there.

20          Q     When was that?

21          A     2014, 2016.

22          Q     But you would agree with me that in my hypothetical  
23 if the gun is pulled out of the vehicle or a backpack and the  
24 shooter immediately stops shooting -- starts shooting, the  
25 camera does nothing to prevent the attack, right?

Olivo - Cross - Pantzer

1 A It would not prevent it.

2 Q Okay. And the same with your concept of video  
3 fencing, Paragraph 39 of your report? Video fencing is a  
4 form of facial recognition technology sort of, right?

5 A That's not correct.

6 Q Okay. So video fencing, I mean, you describe video  
7 fencing in this paragraph 39 as creating a barrier around  
8 Dr. Kershner, right?

9 A (No response.)

10 Q With the fence -- with the video?

11 A (No response.)

12 Q So if someone walks through the very fencing area  
13 that shouldn't be there, police are notified immediately,  
14 right, did I summarize that concept correctly?

15 A If there is an area -- let's call it video  
16 fenced -- and an individual is within that fenced area, then  
17 an alert would be sent to the dispatch center and that camera  
18 that's using that fence would come up automatically and they  
19 would be able to look at it and identify a person within the  
20 fenced-in area.

21 Q Is it any person within the fenced area or is it  
22 certain people you've identified who shouldn't be there?

23 A There's technology that can be wider (phonetic.)

24 Q Okay. So what do you recommend here?

25 A If there's certain things, for instance, that no



Olivo - Cross - Pantzer

1 one should be next to Professor Kershner's car, for instance,  
2 you can put a video fence around his car and if somebody is  
3 walking around his vehicle or let's say within 2 feet of his  
4 vehicle, an alert would go to the dispatcher.

5 Q Okay. Well, here in Paragraph 39 you use as an  
6 example, the hallway leading to Professor Kershner's office.  
7 So what would --

8 A Well --

9 Q -- the video fencing entail there? Would we  
10 eliminate all students from the hallway leading to Professor  
11 Kershner's office or would we just eliminate potential  
12 dangerous individuals?

13 A If I may read the entire paragraph, it says you can  
14 pursue video fencing that would allow the university to  
15 delineate areas where no person should be at certain times,  
16 such as a hallway leading to Professor Kershner's office.

17 If there are certain times that no one but  
18 Professor Kershner should be in that office or in that  
19 hallway. So, for instance, when somebody left this  
20 threatening note on his door, that would have been -- there  
21 would have been an alert sent at that time to the dispatcher.

22 Q Assuming there was a camera there?

23 A Assuming there was a camera there, yes.

24 Q Okay. The video fencing, it doesn't create an  
25 actual barrier, right?

Olivo - Cross - Pantzer

1 A Correct. It's an invisible barrier.

2 Q It just alerts someone when the barrier is broken?

3 A Correct.

4 Q The invisible barrier?

5 A Correct.

6 Q And if the attacker is actively attacking as they  
7 break the visible barrier, again, it does nothing, right?

8 A (No response.)

9 Q The attack's already happening?

10 A Right. The attack is already in progress prior to  
11 them entering the video fencing area, is that what you're  
12 saying?

13 Q Yes.

14 A Yes.

15 Q Okay. You also suggested additional social media  
16 monitoring. I wrote this down specifically on your direct.  
17 I do believe it's in your report, as well. You testified on  
18 direct that -- and I believe this was in response to Judge  
19 Vilardo's question that additional social media monitoring  
20 would allow SUNY Fredonia to, quote, monitor the chatter, is  
21 that correct?

22 A Correct. That was concurring what was in the A1C  
23 report.

24 Q And when you said monitoring the chatter, you were  
25 referring to the dozens of threats that we presented with

Olivo - Cross - Pantzer

1 Chief Isaacson's testimony on social media, Twitter,  
2 otherwise, right?

3 A No, that's not correct.

4 Q Oh. What were you referring to when you spoke  
5 about the chatter?

6 A What I was referring to chatter, I was not  
7 monitoring those threats. What I'm referring to is any  
8 chatter going forward that would potentially be concerning in  
9 terms of a potential threat.

10 Q So similar to the chatter that we presented with  
11 Chief Isaacson's testimony, just you're talking about going  
12 forward --

13 A Right.

14 Q -- into the future?

15 A Monitoring going forward.

16 Q Right. So that chatter that we presented during  
17 Chief Isaacson's testimony, those threats -- and I can pull  
18 them up if you'd like -- those were significant to you,  
19 right?

20 A You would have to tell me specifically which one  
21 you were talking about because the ones that I reviewed were  
22 not direct or imminent threats. So if you could give me an  
23 example of which one you're speaking of.

24 Q So then why do you suggest additional social media  
25 monitoring if you're not concerned about the chatter that we

Olivo - Cross - Pantzer

1 presented with Chief Isaacson's direct testimony?

2 A I didn't say I was concerned about it. I'm saying  
3 that that is a tool that can be utilized as an enhancement to  
4 security.

5 Q But why utilize it?

6 A (No response.)

7 Q If you're only concerned with direct, imminent  
8 threats, then why would we monitor the social media activity  
9 that we presented -- the type of social media activity that  
10 we presented with Chief Isaacson?

11 A For the same reason we're suggesting all the other  
12 security enhancements.

13 Q So they --

14 A It's --

15 Q -- matter --

16 A It's a way to enhance security.

17 Q Okay. Let's just pull up the exhibit. 16 in  
18 evidence.

19 You understand that these are Tweets in response to  
20 Professor Kershnar's appearance on the podcast that we  
21 presented with Chief Isaacson's testimony, right?

22 A Yes.

23 Q And this is the chatter that you were talking about  
24 when you answered Judge Vilardo's question about social media  
25 monitoring, isn't it, this is the type of chatter you were

Olivo - Cross - Pantzer

1 talking about?

2 A Well, it's not just this type of chatter. It's any  
3 what we call intelligence information that may lead to a  
4 potential direct or imminent threat.

5 Q Right. But this is significant enough to you that  
6 you suggest further social media monitoring, isn't it?

7 A This is not significant to me and I'll tell --  
8 because it has already been determined that there was no  
9 credible, imminent or likely threat that existed at the time  
10 that this was compiled.

11 Q Okay. So you're not concerned with this type of  
12 social media activity. When you suggested social media  
13 monitoring, you were talking about only direct and imminent  
14 threats, is that what your testimony is?

15 A When I suggested social media monitoring going  
16 forward such as what was suggested in the AIC report that  
17 would rise to the level of what they considered a credible  
18 threat.

19 Q Okay. I'm just trying to understand what that is  
20 to you, okay. Because you're telling me that it's not  
21 this, right, it's not these Tweets that we presented with  
22 Exhibit 16, that's not significant to you?

23 A With all due respect, I'm not telling you anything.  
24 I'm just suggesting that what is in the AIC report by their  
25 experts is that there was no direct, credible or imminent

Olivo - Cross - Pantzer

1 threat. They reviewed this information and in their  
2 estimation and their professional opinion -- which I have no  
3 other reason to not respect -- there was no credible,  
4 imminent threat. So, as a result of that, I would have to  
5 concur with their findings and tailor the security protocols  
6 accordingly.

7 So what I was suggesting when I said to continue to  
8 monitor is exactly what they were suggesting in their report.  
9 I do not disagree with the fact that they should continue to  
10 monitor it until such time as they do find that credible or  
11 imminent threat.

12 Q So you fully credit the AIC report 100 percent?

13 A I mean, I don't know that I would say a hundred  
14 percent. I would have to review every bit of it and tell you  
15 what part I don't agree with. But their assessment, I have  
16 no reason to not believe it wasn't done professionally.

17 MS. PANTZER: Let's pull up a Word document. I'm going  
18 to do a little bit of a demonstrative, if that's okay, your  
19 Honor.

20 THE COURT: Sure. If the plaintiffs have a problem with  
21 it, they will object.

22 Q Okay. This is going to involve math.

23 A Oh, I need my cell phone. I'm just kidding.

24 Q All right. So, we talked earlier about the  
25 doors --

Olivo - Cross - Pantzer

1 A Correct.

2 Q -- and access control. Let's just say that 50  
3 buildings each have two exterior doors without key fob  
4 access, okay. That's \$2,000 a door, correct?

5 A If you're going to do every door, yes.

6 Q Okay. So we're at \$200,000, right?

7 A But may I stop you first just one second. I'm not  
8 suggesting that you do every door. You mentioned earlier  
9 today when we were talking about the K through 12  
10 environment, you can do the same thing with the academic  
11 buildings at SUNY Fredonia, you can have a single point of  
12 entry and the rest of the doors be secured. So, if, for  
13 instance, a building like Fenton Hall has four exterior  
14 doors, entrance doors, three of them could be locked. The  
15 fourth one could have a key fob access to it. So I'm not  
16 suggesting that you need to add this access to every single  
17 door on campus --

18 Q Okay. Well, is --

19 A -- to be fair.

20 Q -- fifty doors fair? For our little example here,  
21 based on your testimony that Fenton Hall has four, you know,  
22 I'm estimating 50 buildings with two entrances but you just  
23 told me that there's a hall that has four. So is 50 fair for  
24 our example?

25 A Sure.

Olivo - Cross - Pantzer

1           Q     Okay. So that's \$200,000. Additionally, ongoing  
2 social media monitoring and we're just going to take it by  
3 one year here. Okay. So in one year we're at \$200,000 so  
4 far?

5           A     Excuse me. 50 doors would be \$100,000.

6           Q     Is that right?

7           **UNIDENTIFIED SPEAKER:** 50 times two.

8           Q     Yes, okay.

9           A     Okay, sorry.

10          Q     I told you I was going to be in trouble. You're in  
11 trouble. We're both in trouble here, okay. \$100,000.

12                Then we need to add ongoing social media monitoring  
13 which in your report you indicated would be about \$40,000 a  
14 year?

15          A     No, that's not correct.

16          Q     That's the high end, right?

17          A     \$40,000 a year would be an entire social media  
18 feofence, so to speak, to do single subject monitoring in a  
19 case like this with Dr. Kershner, it would be approximately a  
20 thousand to 1500 per month.

21          Q     Okay. All right. So \$12,000?

22          A     That's fair.

23          Q     We're up to \$112,000. Okay.

24                And an armed guard for Dr. Kershner, you indicated  
25 in your report, Exhibit B to your witness summary, that a



Olivo - Cross - Pantzer

1     salaried officer is about \$64,000 for the year; is that  
2     correct?

3             A     Yes.

4             Q     So we'll add 64,000, is that fair?

5             A     No.

6             Q     Why not?

7             A     Because we wouldn't have a armed officer assigned  
8     to him every day of the week.

9             Q     Only when he's on campus?

10            A     Only when he's on campus and so I broke it down  
11     into an hourly wage for time and a half overtime which is \$48  
12     per hour. So if he's on campus approximately ten hours a  
13     week, that would be about \$480 per week that he would be on  
14     campus.

15            Q     Okay. So 480 times 52 -- I just did the math on my  
16     phone -- is \$24,960; do you agree with me there?

17            A     No. Because --

18            Q     Okay.

19            A     Because you're assuming it's a 12-month school  
20     year. It's not.

21            Q     He's only on campus --

22            A     When there's school in session. So you'd have  
23     winter break, you have --

24            Q     How --

25            A     -- summer break.

Olivo - Cross - Pantzer

1           **Q**     How many weeks should I multiply 480 by?

2           **A**     I have to apologize. I don't have the answer to  
3 how many weeks the school year goes, but.

4           **Q**     Let's say 25, half the year.

5           **A**     Okay.

6           **Q**     So we're up to \$12,000. Let's add that to our  
7 total.

8           **UNIDENTIFIED SPEAKER:** So 12 plus 12, right?

9           **MR. BOYD:** \$124,000.

10          **UNIDENTIFIED SPEAKER:** Yeah.

11          **THE WITNESS:** He did that in his head. That was very  
12 good.

13          **Q**     Okay.

14          **UNIDENTIFIED SPEAKER:** 12,000.

15          **A**     Plus 12,000, yeah, 124.

16          **Q**     \$124,000. What about the visual fencing and the  
17 additional technology that you've testified could be of  
18 assistance to the campus? That's approximately \$1.4 million,  
19 right, to implement?

20          **A**     That is not correct.

21          **Q**     Okay. How much would you say that additional  
22 technology, facial recognition, weapon recognition?

23          **A**     Well, the, the information that you reference  
24 earlier with respect to Lockport City School was an entire  
25 campus overhaul of their camera systems, also, so that was a

Olivo - Cross - Pantzer

1 significant amount of that budget.

2 In this case, SUNY Fredonia does not need that.

3 They have a robust camera system, from what I understand, and  
4 it's a good camera system. All they would have to do is buy  
5 software that would overlay on to their existing camera  
6 system and that would be about \$48,000.

7 Q Okay. Forty-eight -- plus \$48,000. Okay. So  
8 we're up to \$172,000; is that correct?

9 A Yes, that --

10 Q Okay.

11 A -- seems correct.

12 Q And we included everything in one year, right, and  
13 we went on the low end of certain things. You testified that  
14 further social media monitoring, more advanced social media  
15 monitoring would be \$40,000. We only used the 12,000-dollar  
16 figure, for example, correct?

17 A Correct.

18 Q Okay. So -- and some of these costs, right, are  
19 annual, they're on an annual basis?

20 A Well, with the exception of the door installation  
21 of the software and, you know, the readers on the doors.

22 Q They're all --

23 A The rest would be an ongoing cost.

24 Q Right, okay. So are you aware that Dr. Kershner's  
25 salary last year was only \$98,000?

Olivo - Cross - Pantzer

1 A No idea what the salary was.

2 MS. PANTZER: Okay. All set with the calculator, Jenna.  
3 Thank you.

4 Q All right. And we established earlier that you're  
5 associated with SN Technologies, you consult for them,  
6 correct?

7 A I was a consultant for them, yes.

8 Q And you --

9 A When they developed the AEGIS system.

10 Q Right. You gained financially from your  
11 association with them?

12 A My firm did.

13 Q And that company, you've testified, already sells  
14 the AEGIS, A -- am I pronouncing that correctly?

15 A A-E-G-I-S, AEGIS, yes.

16 Q That's for facial recognition in schools, right?

17 A It is more than facial recognition but it is a  
18 software security suite --

19 Q That's --

20 A -- for schools.

21 Q And that's the software that you recommended when  
22 we did that little exercise with the calculator?

23 A No.

24 Q Oh, what software were you recommending?

25 A I would recommend a different technology that is

Olivo - Cross - Pantzer

1 much more robust that would be -- there's a -- there's a lot  
2 of different technologies out there that could be utilized.  
3 In this circumstance here, I would probably recommend a  
4 technology called Spark Cognition, C-O-G-N-I-T-I-O-N.

5 Q I'm sorry could you spell?

6 A Spark like, you know, spark. Cognition,  
7 C-O-G-N-I-T-I-O-N.

8 Q Is that in your report at all, Mr. Olivo, to your  
9 knowledge?

10 A The actual technology itself?

11 Q The spark cognition that you just identified for  
12 the Court.

13 A No.

14 Q Any reason why it's not included in your report?

15 A It wasn't, it wasn't something that was asked for.

16 Q Okay. In any case what does Spark Cognition do,  
17 does it do facial recognition?

18 A So there are a lot of technologies in the  
19 marketplace that do things like facial recognition, weapons  
20 recognition, video fencing, what we also call video forensics  
21 where you can go back through historic video and identify a  
22 person or vehicle or something of that nature. Some of these  
23 technologies will integrate with license plate readers and  
24 those type of things. So there's -- there's AEGIS, SN  
25 Technologies, Spark Cognition. Those are the only two that

Olivo - Cross - Pantzer

1 do it all in one place. The rest are Genetec, Avigilon, and  
2 there's a, there are several others out there that do  
3 components of that but these two technologies do it all in  
4 one place.

5 Q Okay. So Spark Cognition is similar to the AEGIS  
6 system, is that right?

7 A It's a more robust system and it's less costly.

8 Q But it has the facial recognition component?

9 A It does.

10 Q And it has the weapons detection component?

11 A It does.

12 Q And it also has the forensic research component?

13 A And it has video fencing and it also has the  
14 ability to launch drones on a college campus that would  
15 follow an active shooter.

16 Q And it's your testimony that software would only be  
17 \$48,000?

18 A It's \$4,000 for 100 cameras.

19 Q Okay. The facial recognition aspect, it's not  
20 foolproof, right?

21 A I'm sorry. I don't understand the question.

22 Q Well, it won't put -- catch every potentially  
23 dangerous individual on camera, right?

24 A The only way facial recognition works is that there  
25 has to be an unwanted or identified person who would be

Olivo - Cross - Pantzer

1 placed in a database and then the facial recognition software  
2 would look for that person to determine if they're on campus.

3 Q Right. So you have to know who the potential  
4 dangerous individual is for it to work?

5 A Correct.

6 Q Okay. Overall this software, this Spark Cognition,  
7 AEGIS system, it's a little like spy equipment, isn't it?

8 A No.

9 Q Well, there are privacy implications with this  
10 equipment, isn't there?

11 A Not, not that I would agree with.

12 Q Well, not that you would agree with but other  
13 people have felt that there are privacy implications with  
14 this type of software?

15 A Would you please tell me specifically what you're  
16 speaking of in terms of privacy.

17 Q Sure.

18 **MS. PANTZER:** Can we pull up Defendant's Exhibit 39.

19 **THE COURT:** In evidence?

20 **MS. PANTZER:** No, your Honor.

21 Q Do you recognize this document, Mr. Olivo?

22 A No.

23 Q Okay. Well, would it refresh your recollection if  
24 I told you that it referred to the implementation of this  
25 type of software at the Lockport School District and the

Olivo - Cross - Pantzer

1 privacy concerns with regard to that?

2 A I know that there was privacy concerns made by a  
3 citizen in Lockport.

4 Q In fact, certain citizens of the school district  
5 argued that the software was racist, right?

6 A I never heard of anyone argue that it was racist.

7 Q You never heard about that?

8 A No. If they did, I'm not aware of it.

9 Q Okay. Well, you're aware that there were concerns  
10 surrounding this software to such an extent that there was a  
11 moratorium on implementation of this software on K through 12  
12 school districts, right?

13 A Correct.

14 Q And so you were aware that there were concerns with  
15 regard to the software and its privacy implications in  
16 schools?

17 A I understand what the concerns were, and if I may  
18 explain those and how there might be a misconception as to  
19 what is in the media.

20 Q My only question was: You understand that there  
21 were privacy implications with regard to this software?

22 A I disagree with the terminology of "implication".

23 Q Okay. Well, the New York State Office of  
24 Information Technology Services doesn't disagree, do they?

25 **MR. COVERT:** Your Honor, I object. I think we're



Olivo - Cross - Pantzer

1 getting pretty far afield here. I don't understand where  
2 this is going.

3 **THE COURT:** I don't understand where we're going,  
4 either, but I'll let her go a little bit further.

5 So overruled.

6 **Q** I'll back up.

7 You're aware of a report published by the New York  
8 State Office of Information Technology Services titled,  
9 quote, "Use of Biometric Identifying Technology In Schools"?

10 A From August of 2023?

11 **Q** I believe so, yes.

12 A Yes.

13 **Q** And that report was written in response to the  
14 moratorium on implementation of this software in schools,  
15 correct?

16 A I don't know why the report was written  
17 specifically but I am aware of report.

18 **Q** Part of the purpose of the report was to explore  
19 the privacy implications at play with regard to this type of  
20 software, wasn't it?

21 A I understand that, yes.

22 **Q** Okay. And just to be clear for the Court, the  
23 title, "Biometric Identifying Technology", that refers to  
24 technology that can identify individuals based on physical  
25 and measurable characteristics, right?

Olivo - Cross - Pantzer

1 A That's what the report says.

2 Q Right. And that's the facial recognition  
3 technology that we've talked about here today?

4 A There is a difference between the technology types  
5 that are referenced in the report and the way technology such  
6 as AEGIS and/or Spark Cognition work. So, I understand that  
7 they are putting all of the technologies under one umbrella  
8 but they don't all work the same and they're not all under  
9 the same umbrella in terms of the issues that have been  
10 raised.

11 Q But the moratorium applies to AEGIS and Spark  
12 Cognition, too, doesn't it?

13 A It applies to all facial recognition technology.

14 Q Right. Okay. According to CSI's website, you're  
15 involved in organizations that function for the protection of  
16 children from sex abuse and trafficking?

17 A Veterans for Child Rescue?

18 Q Yes.

19 A Yes.

20 Q And you serve as the New York State Director for  
21 Veterans for Child Rescue?

22 A Team leader, director, yes.

23 Q And that's, again, an organization dedicated to the  
24 investigation and recovery of victims of child sex  
25 trafficking, right?

Olivo - Cross - Pantzer

1           A       Correct.

2           Q       And when you were a detective in Cheyenne, Wyoming,  
3 you testified on direct that you were a child abuse and sex  
4 crimes detective?

5           A       Correct.

6           Q       Okay. And these organizations, Veterans for Child  
7 Rescue, it -- those types of organizations identify and feel  
8 that child sex abuse is prevalent and pervasive and needs to  
9 be stopped, right?

10          A       Child sex trafficking, child sex abuse, yes.

11          Q       Okay. And I'm just going to remind you of one of  
12 the more salient comments made by Dr. Kershner on the  
13 podcast.

14          **MR. COVERT:** Your Honor, I object.

15          **THE COURT:** Yeah, I thought that the content of the  
16 speak was not relevant.

17          **MS. PANTZER:** Well, your Honor, this goes directly to  
18 the allegation that this speech does not present a unique and  
19 specific danger to the campus community.

20               On direct, Mr. Olivo testified that he doesn't feel that  
21 this is a unique problem. He doesn't feel that this presents  
22 a unique danger. I'm going to talk to him about that. I --  
23 we feel -- Chief Isaacson feels that this does present a  
24 unique circumstance of danger and so I want to get into that.

25          **THE COURT:** Okay. I'll give you some latitude on that.

Olivo - Cross - Pantzer

1 Overruled.

2 **MR. COVERT:** Your Honor, just, if we're going to go down  
3 this path, we're going to be going down a lot of different  
4 rabbit holes as to what else causes offense.

5 **THE COURT:** And we might. I understand that,  
6 Mr. Covert. But, look it, this is a unique -- I don't use  
7 that word lightly, either -- unique case and we'll go down  
8 all the rabbit holes we need to go down.

9 **Q** All right. So Dr. Kershner was quoted on the  
10 podcast saying: "Imagine that an adult male wants to have  
11 sex with a 12-year-old girl. Imagine that she's a willing  
12 participant. A very standard, very widely held view is that  
13 there's something deeply wrong with this and it's wrong  
14 independent of being criminalized. It's not obvious to me  
15 that it's, in, fact wrong. I think that is a mistake."

16 You would agree that statements like this would  
17 create a large population of aggrieved people, right?

18 **MR. COVERT:** I object unless there's some foundation for  
19 his background to show that.

20 **THE COURT:** Yeah, sustained.

21 **Q** Well, based on your background with Veterans for  
22 Child Rescue, based on your background as a detective in  
23 child abuse and sex crimes, would you agree with me that a  
24 statement like that creates a large population of aggrieved  
25 people? You --

Olivo - Cross - Pantzer

1       **MR. COVERT:** I --

2       **Q**     You've dealt with these cases, correct?

3       **MR. COVERT:** Again, I object. He's dealt with  
4 individual cases.

5       **THE COURT:** Okay. One question at a time. There's two  
6 questions there so ask one question, please.

7       **Q**     All right. Based on your background with Veterans  
8 for Child Rescue, as a New York State Director of that  
9 organization, as well as a detective in child abuse and sex  
10 crimes, you would agree with me that a statement like that  
11 creates a large population of potentially aggrieved people?

12       **A**     I cannot.

13       **MR. COVERT:** Objection, your Honor.

14       **THE COURT:** Overruled.

15       **A**     I cannot agree with that because I don't have the  
16 data and the metrics with which to measure that.

17       **Q**     Well, you would agree that there's a large  
18 population of people who have, unfortunately, experienced or  
19 been touched by child sex abuse?

20       **A**     I would agree with you that there are a lot of  
21 victims of child sexual abuse.

22       **Q**     Okay. Statements like this could empower abusers?

23       **MR. COVERT:** Objection, your Honor.

24       **Q**     Couldn't they?

25       **THE COURT:** Overruled.

Olivo - Cross - Pantzer

1           A       I don't have any direct knowledge that they would.

2           Q       You don't think saying that a 12-year-old could  
3 possibly consent to sex would empower someone who seeks to  
4 abuse a 12-year-old?

5           **MR. COVERT:** Your Honor, I object.

6           **THE COURT:** See, I think now we're getting into the  
7 content of the speech and not what you said we were going to  
8 get into. And, again, you folks have told me that the  
9 content of the speech doesn't matter. Now I suppose if you  
10 change your mind, you can, you can change your mind and we  
11 can address these kinds of issues.

12           But right now the way this stands, it doesn't matter  
13 when he said what he said or he said that abortion should be  
14 legal no matter how late in the term of pregnancy or if he  
15 said that, you know, the last election was not stolen. It  
16 could have been anything that he said that created the kind  
17 of chatter that was created, according to you. I didn't, you  
18 know -- that was your choice.

19           So, that seems to me to be out of the case right now.  
20 And so I think Mr. Covert's right, we've now crossed that  
21 line from creating a reaction to the content of the speech.

22           **MS. PANTZER:** Well, your Honor, again, this has been  
23 made an issue because it has been contended that this  
24 particular type of speech did not create a unique security  
25 threat for SUNY Fredonia's campus. It's our position that

Olivo - Cross - Pantzer

1 this content for the discrete purpose of establishing the  
2 uniqueness of this situation, the content does matter, your  
3 Honor.

4 **THE COURT:** But --

5 **MR. COVERT:** Your Honor --

6 **MS. PANTZER:** -- we're going to distinguish --

7 **THE COURT:** But he's not -- this gentleman has been  
8 qualified as an expert with respect to the measures that can  
9 be taken on a college campus or other types of schools to  
10 protect from threats and risks that ear talking about here,  
11 not, I mean, you even made the very point that he's not an  
12 expert on -- I forget the?

13 **MS. PANTZER:** Behavioral analysis.

14 **MR. COVERT:** Behavioral.

15 **THE COURT:** Behavioral analysis.

16 **MS. PANTZER:** Yes.

17 **THE COURT:** And now you're trying to ask questions about  
18 behavioral analysis, I think.

19 **MS. PANTZER:** Well, your Honor, he testified -- this is  
20 cross, right and he testified on direct that he doesn't feel  
21 that this is a unique circumstance. He feels this is the  
22 same as COVID, the mask policies after COVID. You know, so  
23 I'm going to establish that this is an incendiary issue it is  
24 a big deal and it is different than the mask mandates after  
25 COVID.

Olivo - Cross - Pantzer

1           **THE COURT:** But I don't know that you can -- I mean, he  
2 testified that, given his background, he didn't see a huge  
3 difference between this and other things. I don't know that  
4 you can now get into the content of the speech to try to  
5 impeach that. You're trying to impeach it by talking about  
6 or getting him to admit that this is the type of speech that  
7 would create a reaction like that, and I think that's, I  
8 think that is too far afield.

9           **MS. PANTZER:** Okay, I'll move on, your Honor. I'm just  
10 going to finish my questioning as to why this presents a  
11 unique situation in our opinion, okay, I'll move on from the  
12 last comment I made as to empowering abusers.

13           **THE COURT:** No, go ahead. I'm not --

14           **MS. PANTZER:** Okay.

15           **THE COURT:** -- foreclosing you from doing that because I  
16 do think that is an issue: The uniqueness of this sort of  
17 thing. But I think the way you're going about it involves  
18 the content of the speech. I don't know, it's --

19           **MS. PANTZER:** Well, the reason that empowering abusers  
20 is important, your Honor, is because that goes to the  
21 uniqueness of the situation. People feel that this speech  
22 has empowered pedophiles, your Honor, and that makes them  
23 very, very angry. We've seen that in the violent social  
24 media posts. So that's why it's important but I can move on.  
25 Like I said --



Olivo - Cross - Pantzer

1       **THE COURT:** Go ahead. Go ahead.

2       **MS. PANTZER:** -- I'm happy to move on.

3       **THE COURT:** Go ahead. Move on.

4       **Q** Okay. So you testified on direct, Mr. Olivo, that  
5 you don't feel that this speech presents a unique security  
6 situation for SUNY Fredonia; is that correct?

7       **A** I think I testified that there are a lot of  
8 circumstances and I brought up different types of topics that  
9 are incendiary in nature and that specifically there are  
10 things like we mentioned, abortion, mask mandates, critical  
11 race theory, there's a lot of things that schools and  
12 campuses deal with every day.

13       **Q** Right. You equated saying that 12-year-old can  
14 consent to sex is similar to requiring masks in school during  
15 COVID, right?

16       **MR. COVERT:** Your Honor --

17       **A** I did not say that.

18       **MR. COVERT:** I object.

19       **THE COURT:** I don't think he said that.

20       **MS. PANTZER:** All right. Well, I'll break it down.

21       **THE COURT:** Let me ask you this.

22       Are you saying that masks and abortion and what this  
23 gentleman said are all equal in terms of the risk that they  
24 might cause on a college campus?

25       **THE WITNESS:** Or any school grounds. I mean, the

Olivo - Cross - Pantzer

1 terminology that's utilized -- whether it be any of those  
2 three subjects or other things that are incendiary in  
3 nature -- still would be looked at in the totality of the  
4 threat environment and what threats were directly made to  
5 school administrator or the person that made those  
6 statements.

7 **THE COURT:** But, you know, if somebody says something  
8 about masks or somebody says something about abortion or  
9 somebody says something about sex with kids, that they would  
10 all create the same chatter or similar chatter or are you  
11 saying that all three of them would create chatter?

12 **THE WITNESS:** I actually had a school superintendent in  
13 the Southern Tier there was threatened with death because of  
14 mandating that masks be worn in the classroom.

15 **THE COURT:** Yes. But that doesn't get to my question.  
16 My question is: All three of those things might create lots  
17 of chatter.

18 **MS. PANTZER:** Correct.

19 **THE COURT:** But are you saying that you can tell us  
20 which one is going to create the most and which one's going  
21 to create the least of those three things?

22 **THE WITNESS:** I cannot.

23 **THE COURT:** Go ahead. Next question.

24 **Q** Right. So all three of those things that Judge  
25 Vilardo just mentioned for you -- mask mandates, abortion and

Olivo - Cross - Pantzer

1 sex with children -- different levels of grievance, right,  
2 among those things?

3 **MR. COVERT:** Your Honor --

4 **Q** You would agree with that?

5 **MR. COVERT:** -- I would object to the last --

6 **THE COURT:** Yeah, again, this is now getting him into  
7 behavioral questions that he's not qualified to answer.

8 **MS. PANTZER:** Okay.

9 **THE COURT:** So that objection's sustained.

10 **Q** You're familiar with Pizzagate, right?

11 **A** Pizzagate?

12 **Q** Yes.

13 **A** Refresh my memory.

14 **Q** The pedophilia ring --

15 **A** Oh.

16 **Q** -- allegation in the pizza shops?

17 **A** Yes.

18 **Q** You're familiar with that, okay.

19 And that created a high level of grievance among  
20 the people who are upset about that, correct?

21 **MR. COVERT:** Your Honor, I think we're just back door.  
22 I object.

23 **THE COURT:** No, no. This is okay.

24 You can answer. Overruled.

25 **A** I don't know what the extent or the level of

Olivo - Cross - Pantzer

1 grievance that was created --

2 Q You --

3 A -- by that was.

4 Q You don't know, okay.

5 What about the QAnon conspiracy theory surrounding  
6 liberal education institutions and connections to pedophiles,  
7 are you aware of that?

8 A Tangentially. I mean, I don't know the specifics  
9 of it.

10 Q Okay. But you're aware that there are threats of  
11 violence with regard to that issue, right?

12 A I don't know of any specific threats of violence,  
13 I'm sorry.

14 Q Okay. You testified on direct that this type of  
15 situation is similar to a domestic violence situation --

16 **MR. COVERT:** I object.

17 Q -- right?

18 **MR. COVERT:** I object. That's not what he said.

19 **MS. PANTZER:** He can tell me what he said.

20 Q Right?

21 **THE COURT:** Yeah, overruled. You can answer the  
22 question.

23 A I did not testify to that.

24 Q Okay. I'm sorry. So can you tell me what you said  
25 when you were talking about the domestic violence aspect and

Olivo - Cross - Pantzer

1 how you related that to this situation?

2 A Right. When the judge was speaking with respect to  
3 securing and mitigating the risk to Dr. Kershner, one of the  
4 examples I utilized was that every day on -- whether it be  
5 SUNY Fredonia or a different college campus -- there are  
6 people that have restraining orders against potential  
7 attackers, people that are stalking them. I mean, the SUNY  
8 police have plenty of different stalking complaints and all  
9 of those type things. They don't remove those people from  
10 campus.

11 Q Right but they know who the potential attacker is,  
12 right?

13 A Presumably not all the time.

14 Q Well, if it's a stalking situation, they know who  
15 the stalker is, right?

16 A Not all the time. There are people who get stalked  
17 anonymously, online forums or TikTok, Facebook or all of  
18 those things. They don't always know who their potential  
19 attackers are.

20 Q Okay. Well, in the stalking situation that you're  
21 presenting, where they don't know who the stalker is, at  
22 least they know who the potential victim is, right?

23 A Yes. Because --

24 Q Okay.

25 A -- the potential victim would be the complainant.

Olivo - Cross - Pantzer

1           Q     Right. And if it's a domestic violence situation,  
2 they know who the potential attacker is, right?

3           A     They know who the potential attacker is because it  
4 usually is a restraining order, yes.

5           Q     Yes, okay. So if there was a restraining order  
6 against someone, then you know who the attacker is?

7           A     You, you identified the potential threat, yes.

8           Q     Right. Okay. You retained Camelot Investigations  
9 to look into whether there's been a recent reaction to this  
10 lawsuit and the media articles with regard to this lawsuit,  
11 right?

12          A     Yes.

13          Q     Okay. And Camelot was retained to do an internet  
14 scrub in part?

15          A     They were retained to do what's called an open  
16 source intelligence investigation.

17          Q     Does that include an internet scrub?

18          A     I'm not familiar with the terminology of internet  
19 scrub utilized in our, in our work, so that's a different  
20 terminology that we would use.

21                 An open source intelligence investigation would be  
22 in conjunction with the scope of work which was similar to  
23 what was provided to A1C and then the open source  
24 intelligence team and the analysts would go through and do an  
25 analysis of all the information that they could compile

Olivo - Cross - Pantzer

1 within that scope of work. So that's what they were retained  
2 to do: An open source intelligence investigation and  
3 specifically look for any verifiable or any known threats  
4 that are out there with respect to this matter.

5 Q Okay.

6 MS. PANTZER: Your Honor, I just need a moment, if  
7 that's okay.

8 (WHEREUPON, a discussion was held off the record.)

9 MS. PANTZER: Jenna, could you go to Attachment 4 to  
10 Mr. Olivo's report. Within Attachment 4, it's the second  
11 page, I think I want to refer to.

12 Q All right. So, whether or not they were retained  
13 to do a, quote, internet scrub, they were -- they did, in  
14 fact, according to their report, do an internet profile and  
15 social media search, correct?

16 A Correct.

17 Q Okay. And they found that there's no ongoing  
18 threats or a danger reflected in social media, right?

19 A Correct.

20 Q Okay. I'm going to show you what we've marked  
21 as -- well, first, they also found that there's no trending  
22 conversations or posts.

23 MS. PANTZER: And I'll refer you to Paragraph 28 of his  
24 report, Jenna, the second bullet.

25 A Just to be clear, that's not my report. That came

Olivo - Cross - Pantzer

1 from Camelot.

2 Q No, no. I'm going back to your report.

3 A Oh, okay. Sorry.

4 Q Paragraph 28 of your report.

5 UNIDENTIFIED SPEAKER: This bullet.

6 MS. PANTZER: Yes, that's good.

7 Q "More specifically Camelot Investigation's findings  
8 include the following". First bullet: "No ongoing threats  
9 or danger reflected in social media", right?

10 A Yes.

11 Q Okay. And then second bullet?

12 A "As well as all platforms mentioned herein during  
13 the designated timeframe."

14 Q Got it. Second bullet: "There's no -- there does  
15 not appear to be any trending conversations or posts about  
16 the potential of the subject returning to campus", correct?

17 A Correct.

18 Q Okay. Third bullet: "The -- and you're quoting  
19 her report here, right?

20 A Correct.

21 Q "Interest in the subject had diminished to almost  
22 zero." Did I read that correctly?

23 A Correct.

24 Q Okay. Now I would like to pull up what we've  
25 marked as Exhibit 41.



Olivo - Cross - Pantzer

1       **THE COURT:** This is Defendant's 41?

2       **MS. PANTZER:** Yes, your Honor.

3       **THE COURT:**

4       **Q** And you would agree with me, while we're getting to  
5 that, you would agree with me that Twitter, or X as it's now  
6 called, is social media?

7       **A** Yes. That is --

8       **Q** Okay.

9       **A** -- a platform.

10       **Q** And these, these posts are from July of 2023 and  
11 I'll just let you review those.

12       (Pause in proceedings.)

13       **MS. PANTZER:** All right. So, your Honor, I would offer  
14 Exhibit 41 in evidence: Twitter posts from July of 2023.

15       **MR. COVERT:** No objection, your Honor.

16       **THE COURT:** Received without objection.

17       **MS. PANTZER:** Thank you, your Honor.

18       **Q** So we'll scroll to the first page. So, July of  
19 2023, that's recent, you would agree with me, right?

20       **A** Can you just show me where it says 2023.

21       **Q** Sure.

22       **MS. PANTZER:** Scroll down a little bit, Jenna.

23       **A** Okay, right there, okay.

24       **Q** Yeah.

25       **A** Thank you.

Olivo - Cross - Pantzer

1 Q Would you agree with me?

2 A Sure.

3 Q So Page 1 references Dr. Kershner and states,  
4 quote, "public hangings", right?

5 A Correct.

6 Q Okay. Page 2: "There's only one cure for this  
7 sickness and it starts with a 5.56 round!", correct?

8 A That's what it says.

9 Q And that's referencing Dr. Kershner as well, right?

10 A (No response.)

11 Q It's a reTweet?

12 A Presumably, yes.

13 Q Okay. And I don't know that much about guns but I  
14 think a 5.56 round is a gun --

15 A It's an --

16 Q -- thing.

17 A -- AR15 round or an AK47 round.

18 Q Okay.

19 A Whatever you want to call it, so.

20 Q Page 3. "Build a gallows, and he can lecture us on  
21 his way up the stairs", right?

22 A Yes.

23 Q Okay. "Gallows" is something you hang someone  
24 from, right?

25 A Correct.

Olivo - Cross - Pantzer

1           Q     Okay. Page 4: "No trial, Just executions, Both of  
2 them."

3                     Did I read that correctly?

4           A     You read it correctly. I don't know who they're  
5 referencing but I know that you read it correctly.

6           Q     Well, they're reTweeting on a post about Stephen  
7 Kershner, right?

8           A     No. Justin Trudeau.

9           **MS. PANTZER:** Well, scroll up.

10          A     Justin Trudeau presumably is the other person that  
11 they're talking about when it says "both of them"?

12          Q     Right, both of them?

13          A     All right.

14          Q     But they're referring to also executing  
15 Dr. Kershner, right?

16          A     Along with Justin Trudeau, yes.

17          Q     Right. Okay. Page 6. "Gross. Someone end him  
18 please", right?

19          A     Yes, that's what it says.

20          Q     Okay. So you would agree with me that Camelot  
21 Investigations somehow didn't find these or --

22          A     I don't know. I'd have to know the context in  
23 which these were collected and who collected them.

24          Q     Well, they were collected on Twitter?

25          A     By who?

Olivo - Cross - Pantzer

1 Q By our office.

2 A So you got this off of Twitter directly?

3 Q Correct.

4 A Okay.

5 Q But Camelot investigations didn't?

6 A And you're not on Twitter with Wall Street Apes?

7 Q What do you mean?

8 A You don't follow Wall Street Apes on your Twitter  
9 account or anything? How did -- I guess the question would  
10 be how it was found.

11 Q Well, does Camelot Investigations need to follow  
12 everyone in order to identify the threats?

13 A Well, it depends on how things are captured. So,  
14 again, I'm not an expert in open source intelligence. I'll  
15 just give you my layman's opinion as to how it works. But  
16 open source intelligence is anything that is readily and  
17 openly available that doesn't require a warrant, a subpoena  
18 or signed release and does not require you to be a friend or  
19 allowed follower of an individual.

20 So, I don't know how this was captured so it would  
21 be hard for me to opine on how they -- they collected it or  
22 not? I'd have -- she would have to answer that. I can't  
23 answer that for her.

24 Q All right. Well, her commentary that there's no  
25 ongoing threats or danger reflected in social media is wrong,

Olivo - Cross - Pantzer

1 right?

2 **MR. COVERT:** Your Honor, I object. That's not what she  
3 says in relation to that time period on Page 18 of the  
4 report.

5 **THE COURT:** I'm sorry.

6 **MR. COVERT:** At Page 18 of the report, that's not what  
7 she says in relation -- in the report to the period of  
8 June 2023 through September '23. She says it's minimal and  
9 that there's no direct threats.

10 **MS. PANTZER:** Okay. Well -- understood, your Honor.  
11 I'll withdraw the question.

12 **THE COURT:** Okay, fine.

13 **Q** Your interpretation of her report that there's,  
14 quote, "no ongoing threats or danger reflected in social  
15 media" is wrong, right?

16 **A** No.

17 **Q** There's a danger reflected in the social media,  
18 isn't there?

19 **A** That's not as what -- you're asking me what I  
20 interpreted her report to say.

21 **Q** Right.

22 **A** Correct. And that is what is in my interpretation.

23 **Q** Which was wrong?

24 **MR. COVERT:** I object. That's not --

25 **A** That's not correct.

Olivo - Cross - Pantzer

1           **Q**     Okay, all right. I'll move on.

2           **THE COURT:** Do you understand what she's asking?

3           So, your interpretation was that there's no threat in  
4 social media. Now she's showing you these and she's saying  
5 aren't these threats in social media.

6           **A**     Are you -- I'm sorry. I apologize.

7           Are you asking me if my interpretation of her  
8 report because I believe that was your question?

9           **Q**     Yes.

10          **A**     My interpretation of her report that there was no  
11 ongoing threats in social media is correct, that's what she  
12 said in her report. I, I can't dispute that because I don't  
13 have this information. I didn't conduct the open source  
14 intelligence investigation.

15          **Q**     Right. So, the person you retained to conduct a  
16 social media search, she missed these?

17          **MR. COVERT:** I object.

18          **THE COURT:** Do you know whether she missed these or not?

19          **THE WITNESS:** Your Honor, I can't tell because I don't  
20 know the methodology by which these were collected so I would  
21 have to ask -- she would have to be the only one that could  
22 answer that question.

23          **Q**     Okay. We'll move on.

24                 Showing you what we've marked as Exhibit 42. These  
25 are Twitter posts, Mr. Olivo, that we've gathered from

Olivo - Cross - Pantzer

1 September of 2023. This month. Okay.

2 **MS. PANTZER:** Your Honor, I'm going to ask that these be  
3 put into evidence, as well.

4 **MR. COVERT:** We're at 42?

5 **MS. PANTZER:** Yes.

6 **MR. COVERT:** No objection.

7 **THE COURT:** Received without objection.

8 **MS. PANTZER:** Thank you, your Honor.

9 Okay. So scroll all the way to the top, Jenna, so we  
10 can give Mr. Olivo some context.

11 **Q** All right. You're familiar with WGRZ Channel 2,  
12 right?

13 **A** Correct.

14 **Q** That's a local news station?

15 **A** Correct.

16 **Q** Okay. And so the root Tweet is with regard to  
17 their article that was published in regard to this lawsuit?

18 **A** (No response.)

19 **Q** With you agree with me?

20 **A** Correct.

21 **MS. PANTZER:** Okay. So scrolling down.

22 **Q** The reTweet responses, Page 1: "Dude needs to be  
23 taken out back behind the woodshed, philosophically speaking,  
24 you know, just an exchange of ideas?"

25 Did I read that correctly?

Olivo - Cross - Pantzer

1 A Yes, you did.

2 Q Okay.

3 **MS. PANTZER:** Scrolling down.

4 Q "I am all for free speech, however, his comments  
5 are disturbing and worthy of a solid punch in the F'ing face  
6 more than once."

7 Did I read that one correctly?

8 A Yes, you did.

9 Q You agree that these comments intimate violence  
10 towards Dr. Kershner, right?

11 A I agree that there's commentary that could be of a  
12 disturbing nature.

13 Q Violent?

14 A Well, they're, they're advocating that he gets a  
15 punch in the face.

16 Q Violence, right?

17 A Yes.

18 Q Okay. So --

19 **MS. PANTZER:** Scrolling down.

20 Q "Hey, Stephen Kershner, come have that discussion  
21 with me in person, you sick freak."

22 It's a little less violent, right?

23 A Yes, it's also presumably from someone from Canada.

24 Q And, again, these were missed by Camelot  
25 Investigations, right?



Olivo - Cross - Pantzer

1       **MR. COVERT:** Your Honor, I object.

2       The report at Page 18 talks about no direct threats,  
3       that these are not -- and how the communications are minimal  
4       and that they're getting to be less.

5       **THE COURT:** Well, I don't know how he could know whether  
6       they were missed or not.

7       **Q**     Okay. Well, but at a minimum --

8       **THE COURT:** So, sustained.

9       **Q**     All right. At a minimum, you determined that there  
10      was no social media threat based on the Camelot  
11      Investigations report, right?

12      **A**     I took their report for what it was presented as  
13      and it indicated that there was no credible, imminent known  
14      threat --

15      **Q**     Right.

16      **A**     -- correct.

17      **Q**     Now that you've seen these, there is violence  
18      intimated on social media recently, isn't there?

19      **A**     I don't know that I agree with that. Your  
20      terminology is, is that -- you're saying that there's  
21      violence intimated on social media. That is correct.  
22      Whether or not this is a credible and imminent threat would  
23      have to be vetted.

24      **Q**     Okay. Well, at a minimum, the interest hasn't  
25      diminished to zero, has it?

Olivo - Cross - Pantzer

1 A According to these Tweets, no.

2 **THE COURT:** Okay. We're going to take a break now.

3 It's 3:00. So we're going to take a break. We'll come back  
4 in about 15 minutes, quarter after 3.

5 **MS. PANTZER:** Thank you, your Honor.

6 **MR. COVERT:** Thank you, your Honor.

7 **THE COURT:** Thanks.

8 (WHEREUPON, recess taken.)

9 (Open court:)

10 **THE CLERK:** We are back on the record for the  
11 continuation of evidentiary hearing in the case 23-CV-525,  
12 Kershner v. Kolison, et al.

13 All counsel and parties are present.

14 **THE COURT:** Okay, I remind the witness that he's still  
15 under oath.

16 And just for planning purposes, we're going to finish  
17 this witness and then I want to meet with all the lawyers in  
18 chambers to discuss where we're going after this, okay.

19 So, continue.

20 **MS. PANTZER:** Yes, your Honor.

21 **THE COURT:** I hope we finish this witness, anyway.

22 **MS. PANTZER:** Your Honor, we are adding an additional  
23 exhibit to our list. We apologize we did not have time to  
24 file. But I would be able to hand a copy up for the Court.

25 **THE COURT:** Has the plaintiff seen this?

Olivo - Cross - Pantzer

1           **MS. PANTZER:** I did provide a copy to plaintiff's  
2 counsel, yes.

3           **THE COURT:** Okay. Any problem -- well, let me take a  
4 look at it and we can do whatever we do.

5           **MS. PANTZER:** So for identification, your Honor, I think  
6 this would be 61 on our list.

7           **Q** Mr. Olivo, we were discussing the social media  
8 searches that were conducted by the open source investigation  
9 that you retained Camelot Investigations to perform, correct?

10          **A** Correct.

11          **Q** Okay. I'm showing you -- and part of the issue, or  
12 maybe not issue but, you know, correct me if I'm wrong but  
13 part of the problem with open source intelligence is that you  
14 can't find everything potentially threatening on the  
15 internet, right?

16          **A** It's impossible to find everything, period, whether  
17 threatening or not.

18          **Q** Right. Are you familiar with a social media  
19 website called Yik Yak?

20          **A** I've heard of it, yes.

21          **Q** I'm showing you what we've marked as Exhibit 61 for  
22 identification.

23          **MR. COVERT:** Your Honor, I do object. We were not  
24 previously provided this. I haven't had a chance to review  
25 it with Mr. Olivo. He's not seen it, as opposed to the

Olivo - Cross - Pantzer

1 exhibits that we all exchanged.

2 **THE COURT:** Okay. So why don't we have our meeting  
3 right now.

4 **MR. COVERT:** Very good.

5 **THE COURT:** Okay. And come downstairs I will see you  
6 folks in a few minutes and we'll resume at some point.

7 **MR. COVERT:** Thank you.

8 **MS. PANTZER:** Thank you, your Honor.

9 (WHEREUPON, recess taken.)

10 (Open court:)

11 **THE CLERK:** We are back on the record for the  
12 continuation of the evidentiary hearing in case number  
13 23-CV-525, Kershner v. Kolison, et al.

14 All counsel and parties are present.

15 **THE COURT:** Okay. I remind the witness that you're  
16 still under oath.

17 And you may continue.

18 **MS. PANTZER:** Thank you, your Honor.

19 **Q** I don't know if we got a response to the last  
20 question on the record. Is there a way to read it back, I  
21 don't even know?

22 **MR. COVERT:** I don't think there was a response. I  
23 think I objected and then we broke.

24 **THE COURT:** I think that that's right.

25 And are you withdrawing your objection to the exhibit?

Olivo - Cross - Pantzer

1           **MR. COVERT:** We would just like to have some idea of  
2 where it came from or who obtained it but she can bring that  
3 foundation in and we probably won't.

4           **THE COURT:** Okay, terrific.

5           So you can use the exhibit and then if you want to admit  
6 into evidence, lay a bit of a foundation with the witness --  
7 obviously he doesn't know, either -- but you can lay a  
8 foundation that way, okay.

9           **MS. PANTZER:** Thank you, your Honor.

10          **THE COURT:** So is there a way to read back last  
11 question?

12          **MR. COVERT:** I don't think so because there's no court  
13 reporter.

14          **THE CLERK:** You know what, I would have to call the IT  
15 office.

16          **MS. PANTZER:** It's okay. It's okay. I can do it again  
17 I'm sure.

18          **Q** I think my question, Mr. Olivo, was whether or not  
19 part of the issue with an open source intelligence  
20 investigation is that certain social media or certain  
21 internet threats may not be readily available to someone  
22 conducting an open source investigation?

23          **A** That is correct. If it's a private setting or if  
24 there's requirements for friends or access to certain things,  
25 it might not be readily accessible, correct?

Olivo - Cross - Pantzer

1           **Q**     Okay. So Exhibit 61 that we've marked for  
2     identification is in front of you.

3                    Again, have you heard of the website Yik Yak, the  
4     social media website?

5           **A**     Yes.

6           **Q**     Okay. Showing you the first page of the exhibit.  
7                    Do you know who Amanda Austin is, by any chance?

8           **A**     I do not.

9           **Q**     Okay. Well, would you agree with me that  
10    Amanda Austin sent this email to Maria Carroll on  
11    September 28th, 2023?

12          **A**     I would just say --

13          **MR. COVERT:** Your Honor --

14          **A**     -- that someone --

15          **MR. COVERT:** -- I would object. I think maybe if we --  
16    the question can be phrased "does it appear that".

17          **THE COURT:** Yeah. Does it appear that this is an email  
18    from someone named AmandaAustin@Fredonia.edu, to someone  
19    named MariaCarroll@Fredonia.edu?

20          **THE WITNESS:** Yes.

21          **Q**     And it was sent on September 28th, 2023, at  
22    12:35 p.m., would you agree with me?

23          **A**     Correct.

24          **Q**     Okay. And there's an attachment if we scroll down.  
25                    And I'll represent to you, Mr. Olivo, that this

Olivo - Cross - Pantzer

1 attachment is -- contains Yik Yak postings with regard to  
2 Dr. Kershner from this weekend?

3 **MR. COVERT:** Your Honor, I'm just going to object.

4 I mean, the document says what it says. We don't have  
5 any authentication. The date is today's date at 12:35 p.m.  
6 We have no idea who posted this.

7 I do not mean to be difficult but I, I am uncomfortable  
8 having him somehow authenticate or validate the document. It  
9 sort of speaks for itself as to what it might be. But I'm  
10 very hesitant to, to ask him to authenticate a document.

11 **THE COURT:** Well, no, no. He's not going to be asked to  
12 authenticate the document and I don't think he has been asked  
13 to do that.

14 So let's let her use the document and it's not admitted  
15 and unless there's some authentication of it, it won't be  
16 admitted but let's let her use it.

17 **MR. COVERT:** Okay.

18 **THE COURT:** And I can, again, this is not a jury trial  
19 so.

20 Go ahead.

21 **MS. PANTZER:** Thank you, your Honor.

22 So again, we'll scroll -- Jenna, could you just zoom a  
23 little bit, yes, so that we can see the whole page.

24 **Q** All right. So you said -- you testified, though,  
25 Mr. Olivo, that you are familiar with Yik Yak?

Olivo - Cross - Pantzer

1 A Correct.

2 Q Okay. So do you recognize these posts as Yik Yak  
3 posts?

4 A They appear to be, yes.

5 Q Okay. And the first post indicates: "Why is  
6 Kershna at Old Main", correct?

7 A Correct.

8 Q And it states that it's from 18 hours ago?

9 A Correct.

10 Q Okay. And the remaining posts, do you understand  
11 those, based on your familiarity with Yik Yak, to be  
12 responses to the root post: "Why is Kershna at Old Main"?

13 A Correct, but with respect to the timeframe if it  
14 was posted on 9/21, it would have been posted a week ago  
15 today so that would have been 18 hours before so it would  
16 have been Wednesday evening of 9/20.

17 Q So, do you know what -- first of all, do you know  
18 what "Old Main" is?

19 A I believe it's a bar in Fredonia.

20 Q Right. Okay. So the root postings "why is  
21 Kershna at Old Main" and then the remaining posts -- if I  
22 could read them to you -- "Is he for FR".

23 Do you know what "FR" means?

24 A For real.

25 Q Yes. I believe so.



Olivo - Cross - Pantzer

1           A     I'm old but I hear my kids talk about this stuff  
2 all the time.

3           **THE COURT:** That's good. I never would have gotten  
4 that.

5           A     For real, yeah.

6           **Q**     I believe --

7           A     FRFR means for real for real, so.

8           **Q**     I believe that's correct.

9                     And then the second response states "run, people,  
10 run, no, for real why is he here. I don't think that's  
11 legal. \$50 and I'll yell at him. What? No way."

12                    So, the reason I'm showing you these posts, would  
13 you agree with me that on Yik Yak at least there's been some  
14 very recent interest shown as to Dr. Kershner and his legal  
15 matter here?

16           A     On 9/20, yes.

17           **Q**     Yes.

18           **MR. COVERT:** I object to the characterization as his  
19 legal matter.

20           **MS. PANTZER:** I'm talking about the lawsuit here.

21           **MR. COVERT:** What was just read does not refer to a  
22 lawsuit, unless I'm missing something.

23           **MS. PANTZER:** I'll rephrase, your Honor. It's no  
24 problem.

25           **Q**     I'm just asking you that these Yik Yak posts seem

Olivo - Cross - Pantzer

1 to indicate that there has been some interest in the Kershner  
2 matter very recently?

3 A This is as of 9/20. An interest in Mr. -- or  
4 Dr. Kershner being in Old Main.

5 Q Right. 9/20 is --

6 A Eight days ago.

7 Q Right. So, and -- and it says "I don't think  
8 that's legal". They're probably referring to this matter,  
9 right, the legal matter?

10 A I have no --

11 **MR. COVERT:** I object.

12 **THE COURT:** Yeah, sustained.

13 A -- idea.

14 **THE COURT:** Yeah, sustained.

15 **MS. PANTZER:** That's fine.

16 **THE COURT:** Sustained.

17 Q The next page.

18 "Can someone confirm if Stephen Kershner is at Old  
19 Main or not?"

20 Again, do you recognize that to be a Yik Yak post?

21 A All these posts appear to be Yik Yak posts.

22 Q "Why is Kershner laughing with Perry?"

23 Now, do you know who "Perry" is?

24 A I have no idea.

25 Q "Because they're both gross, cuz they're both

Olivo - Cross - Pantzer

1 pedos."

2 Do you recognize those to be Yik Yak posts from  
3 this very recently, September of 2023?

4 A They appear to be the same trip thread of the post,  
5 yes.

6 **MS. PANTZER:** Okay, wait. Jenna.

7 **Q** The root post here states: "I don't believe  
8 Kershnar's at Old Main unless we see a photo pic or it didn't  
9 happen. He was so uncomfy he left."

10 Do you agree with me that those Yik Yak posts from  
11 very recently with regard to Dr. Kershnar being at a bar near  
12 SUNY Fredonia?

13 A They're part of the same thread that we discussed,  
14 yes.

15 **Q** So there's some interest online with regard to  
16 Kershnar recently?

17 A Yes.

18 **MS. PANTZER:** Okay. Down.

19 **Q** Then they posted a photo of Dr. Kershnar at the  
20 bar, would you agree with me, on the sixth page here?

21 A That, that appears to be him, yes.

22 **Q** All right. Stop.

23 "This is so rancid, like get out of Old Main LOL.  
24 I'm vomiting. OMFG, Tay Tay would be so sad. Someone F him  
25 up."

Olivo - Cross - Pantzer

1 Did I read that one correctly, that Yik Yak post?

2 A Number five, yes.

3 Q Yes. Number six states: "I hate seeing him out.

4 YTFI -- means the F -- are you hanging out a college bar for  
5 a Taylor Swift night. You're not beating the allegations any  
6 time soon."

7 Number seven states: "Someone jump him, OMG."

8 What is your knowledge of what "jump him" means?

9 A It's street vernacular. It would mean to  
10 physically attack someone.

11 Q And again these are Yik Yak posts from very  
12 recently, this month, correct?

13 A I believe so.

14 Q And an open source intelligence investigation  
15 wasn't able to pick these up likely because they're private  
16 based on geography, isn't that correct?

17 A Yes.

18 Q Okay.

19 **THE COURT:** What does that mean: "Private based on  
20 geography"?

21 **MS. PANTZER:** Your Honor, it's our understanding that  
22 Yik Yak -- Yik Yak is geographically you can only get it into  
23 the post it if you're within the vicinity.

24 **THE COURT:** I see.

25 **MS. PANTZER:** Your Honor, just because I have at this

Olivo - Cross - Pantzer

1 point used this exhibit with the witness, I would offer this  
2 into evidence, Exhibit 61.

3 **MR. COVERT:** Again, we have no authentication, your  
4 Honor. I would defer to the Court.

5 **THE COURT:** I'll accept it for what it's worth.

6 **MS. PANTZER:** Thank you, your Honor.

7 **THE COURT:** I think I understand what it is and what it  
8 isn't, so.

9 **MS. PANTZER:** Jenna, if you could just go back to the  
10 July and September Tweets, July 2023, Exhibits 41 and 42 in  
11 evidence.

12 **Q** Mr. Olivo, do you remember going over these with  
13 me, the July 2023 and September 2023 Tweets, that we  
14 discussed?

15 **A** Yes.

16 **Q** You don't think that these Tweets contain any  
17 imminent or credible threats; is that correct?

18 **A** Not in my estimation.

19 **Q** Okay. What is an imminent or credible threat in  
20 your mind?

21 **A** An example would be I'm coming to your house, I'm  
22 going to kill you near the picture of the gun.

23 I mean -- and I can give you a real life example.  
24 We had a student in a school posted photographs of himself on  
25 the first day of school getting ready for school and putting

Olivo - Cross - Pantzer

1 a 9mm in his backpack. That is an imminent, credible,  
2 realistic, timely threat.

3 Q Okay. Going back earlier, you've never been a  
4 member of the FBI's Behavioral Analysis Unit, correct?

5 A Correct, I have not.

6 Q Okay. And you had never heard of the term  
7 "behavioral leakage" before Chief Isaacson's testimony,  
8 right?

9 A I have heard of the term.

10 Q Your expert report states at Paragraph 18, quote,  
11 "Nothing in Isaacson's testimony suggested the existence of  
12 any specific intelligence information or facts supporting  
13 Isaacson's conclusion that Kershner's return would likely --  
14 would result in likely violence or imminent threat", is that  
15 true?

16 A I don't have it in front of me but I believe that's  
17 what it says, yes.

18 Q So you're only concerned with specific direct  
19 threats, is that correct?

20 A I'm not concerned with just specific direct  
21 threats. I'm saying that if there's no credible or  
22 identifiable threat, there is nothing with which you can  
23 adjust your security posture to. So my opinion is, is that  
24 if there is lacking a specific imminent, likely or credible  
25 threat, then there is a scenario in which the campus can be

Olivo - Cross - Pantzer

1 secured.

2 Q Okay. So but these Tweets and the Tweets that we  
3 showed Chief Isaacson on direct, to you, those aren't  
4 concerning and don't require a security increase; is that  
5 correct?

6 A Chief Isaacson did not think so and he did not  
7 increase security as a result of them.

8 Q Well, he asked Dr. Kershnar to remain off campus,  
9 right?

10 A I don't know if he did or if that was a directive  
11 from HR but.

12 Q Well, SUNY Fredonia in response to those threats  
13 asked Dr. Kershnar to remain off campus --

14 A I believe --

15 Q -- right?

16 A I believe the university did.

17 Q Okay. So --

18 **THE COURT:** Let me ask a question. So one of the things  
19 that Mr. Isaacson said was that "howlers don't hunt and  
20 hunters don't howl".

21 Do you disagree with that?

22 **THE WITNESS:** That is a theory, your Honor, that is used  
23 in threat analysis and behavioral analysis. We -- my  
24 training is more along the lines of response to that or  
25 mitigation of it.

Olivo - Cross - Pantzer

1           So, with respect to "hunters don't howl and howlers  
2 don't hunt", I don't agree with it specifically because I  
3 don't have any knowledge of that database or how they come up  
4 to that conclusion. My knowledge and expertise is more along  
5 the lines of if there is a threat identified, how do we  
6 mitigate it, how do we reduce the risk.

7           **THE COURT:** Okay. Thank you.

8           **Q** Okay. Well, piggybacking off of that, you just  
9 said that if there is a threat identified, your training is  
10 in how you mitigate the risk, correct?

11          **A** Correct.

12          **Q** So your training doesn't have any relevance to  
13 the "howlers don't hunt" analysis, is that what you're  
14 testifying to?

15          **A** No, that's not what I'm threat -- what I'm  
16 testifying to. If the thought process is "howlers don't  
17 hunt" -- which means that people who make threats don't act  
18 them out -- that's not what I'm saying. I mean, if that's  
19 Mr. Isaacson's thought process, and he believes that the  
20 howler is not a threat, then that's his thought process. But  
21 if he does believe the howler is a threat, my expertise is  
22 how to mitigate that threat.

23          **Q** Okay. We're going to address the howlers don't  
24 hunt issue further in a minute but I want to get back to the  
25 behavioral analysis --



Olivo - Cross - Pantzer

1           A     Okay.

2           Q     -- aspect. Again, the behavioral leakage analysis  
3 that Chief Isaacson testified to on direct, you disagree with  
4 that analysis, correct?

5           A     I disagree with the conclusion that was a result of  
6 that analysis. If that's his opinion and that's his  
7 analysis, I can't dispute that if that's what he came up  
8 with.

9           Q     But you don't agree that behavioral leakage poses a  
10 threat?

11          A     I don't agree that behavioral leakage poses a  
12 threat in the imminent credible and immediate sense.

13          Q     Right because you're concerned only with direct and  
14 imminent threats?

15          A     And cred --

16          Q     You're not concerned --

17          A     And credible.

18          Q     With -- and credible. You're not concerned with  
19 behavioral leakage; is that correct?

20          A     Well, credibility is a very important part of the  
21 threat analysis. So, if behavioral leakage was a problem,  
22 then there should have been a vetting of those leaked  
23 behaviors and the people with which they're attributed to.

24          Q     All right. Let's talk about the vetting because  
25 you testified on direct about a zero tolerance policy that

Olivo - Cross - Pantzer

1 essentially you believe that every single threat that Chief  
2 Isaacson found concerning should have been reported to law  
3 enforcement of some kind; is that correct?

4 A I don't think that's what I said. I said that in  
5 my consulting experience, in my professional experience, that  
6 if there's a credible, direct threat, that the recipient of  
7 that threat should have a -- or let's say in this case SUNY  
8 Fredonia or a school district have a zero tolerance policy,  
9 that threat should be reported to law enforcement for further  
10 investigation and action.

11 Q A local law enforcement agency?

12 A Depends on where the threat originates from.

13 Q Well, do you think that a local law enforcement  
14 agency -- let's just take this first post.

15 MS. PANTZER: Jenna could you scroll down a little bit  
16 from the July 2023.

17 Q Public hangings. Do you think a local law  
18 enforcement agency has the competency and ability to track  
19 down who @pendejomemes is?

20 A So there's two parts to that. Number one, I don't  
21 believe that is a direct and imminent threat. But if it  
22 were, yes, local law enforcement does have the means to get  
23 the information as to the originator of that account from  
24 Twitter.

25 Q You would agree that Chief Isaacson has more recent

Olivo - Cross - Pantzer

1 and direct law enforcement experience than you do, right?

2 A He has more recent experience, yes.

3 Q Okay. So in your experience, did you testify on  
4 direct that you would refer these, these Twitter threats out  
5 to the FBI?

6 A I don't believe that's what I said.

7 Q Okay. So you feel that local law enforcement  
8 agencies, Chautauqua County Police Department should be able  
9 to track down @pendejomemes on Twitter?

10 A Local law enforcement, if that's where the threat  
11 jurisdiction lies, should be notified. And local law  
12 enforcement in my experience has the ability to bring in  
13 federal counterparts and other agencies and resources,  
14 whether it be federal or State Police to assist them in  
15 tracking down and verifying the originator of the threat --

16 Q Okay.

17 A -- if there is one.

18 Q But, again, you don't feel that this "public  
19 hangings" -- just taking this as an example. We've seen many  
20 Tweets like this, right? You don't feel that this "public  
21 hangings" Tweet is a credible threat?

22 A I don't believe that's a direct threat, no.

23 Q Okay. So Chief Isaacson didn't need to refer it  
24 out, in your opinion?

25 A I don't think Chief Isaacson referred any of the

Olivo - Cross - Pantzer

1 alleged threats out.

2 Q Well, you -- you testified that if it's not a  
3 direct or imminent threat, it doesn't need to be referred out  
4 at all, right?

5 A No. You're asking me if Chief Isaacson -- well --  
6 Chief Isaacson didn't have this, correct?

7 Q Right, he didn't have this.

8 A So --

9 Q But we've seen many like this, right?

10 A Right.

11 Q So, this threat -- "public hangings" by  
12 pendajomemes on Twitter -- should this threat have been  
13 referred out to a local law enforcement agency?

14 A In my professional experience, no.

15 Q And that's because it's not a credible or direct  
16 threat in your opinion?

17 A Correct.

18 Q But it is behavioral leakage, isn't it?

19 A That would be an opinion that I don't have the  
20 qualifications to render.

21 Q Understood. Okay.

22 Let's go back to howlers don't hunt. You don't  
23 address this concept in your expert report, do you?

24 A No, I do not.

25 Q Okay. And that's because you feel that you don't

Olivo - Cross - Pantzer

1 have the qualifications to address this issue, howlers don't  
2 hunt?

3 A We've already established that I'm not an expert in  
4 behavioral analysis. And that is a term that's used in  
5 behavioral analysis oftentimes.

6 Q Okay. So you're not comfortable with this concept  
7 of "howlers don't hunt" personally?

8 MR. COVERT: Your Honor, I object to the  
9 characterization.

10 THE COURT: Yeah, I don't know what that means.

11 Q Okay, I just want to --

12 THE COURT: Sustained.

13 Q I just want to make sure I understand, I'm sorry.  
14 You testified that you're not an expert in  
15 behavioral analysis and, so, therefore, you don't have a ton  
16 of familiarity, right, with this concept of "howlers don't  
17 hunt"?

18 A I'm familiar with it but you asked me why I didn't  
19 address it in my report. That's because I'm not an expert in  
20 that field. So, addressing that conclusion or summation by  
21 Chief Isaacson would not be within my bailiwick.

22 Q Already. You feel that the AIC report undermines  
23 Chief Isaacson's conclusions; is that correct?

24 A I wouldn't say undermine. I think they contradict  
25 each other.

Olivo - Cross - Pantzer

1           Q     Can you go to his report at Paragraph 25 -- 24, I'm  
2     sorry. States: "Overall, it is my opinion that Chief  
3     Isaacson's conclusions were undermined by the report of A1C  
4     partners", did I read that correctly?

5           A     Correct.

6           Q     And as a security professional, you regularly order  
7     and review the types of reports provided by A1C partners?

8           A     Correct.

9           Q     And in doing so, you've never disagreed with those  
10    reports, right?

11          A     I don't have the expertise to disagree with those  
12    reports.

13          Q     You're aware that A1C director, Richard Denholm  
14    provided a declaration in this matter?

15          A     I am.

16          Q     Okay. He's also former FBI?

17          A     I understand that.

18          Q     For 22 years?

19          A     I understand that.

20          Q     Okay. The declaration confirms that A1C was  
21    contracted by Isaacson in August of 2022?

22          A     (No response.)

23          Q     We can pull it up. Would that be helpful?

24          A     No, I --

25          **MS. PANTZER:** Jenna.

Olivo - Cross - Pantzer

1 A I disagree with the -- okay.

2 Q I'm sorry. I didn't hear your response.

3 A Okay.

4 Q So, yes, you agree the declaration confirms that  
5 AlC was contracted with by Isaacson in August of 2022,  
6 correct?

7 A Yes.

8 Q Okay. In September of 2022, SUNY Fredonia  
9 officially retained AlC to conduct the internet research that  
10 is summarized in that AlC report, correct?

11 A I believe that's correct.

12 Q And AlC was asked to provide a, quote, "internet  
13 scrub", isn't that true?

14 **MS. PANTZER:** Let's pull up the Denholm declaration,  
15 please. That's from Paragraph 9.

16 Your Honor, I feel like we've addressed the Denholm  
17 declaration but I don't know if it's in evidence but I would  
18 offer it.

19 **MR. COVERT:** No objection.

20 **THE COURT:** Received without objection.

21 **MS. PANTZER:** Thank you, your Honor. That's Exhibit 44.

22 Q Again, Paragraph 9, Richard Denholm confirms in  
23 this declaration that AlC was asked to conduct a, quote,  
24 "internet scrub", right?

25 A No, I disagree with that statement. It says here

Olivo - Cross - Pantzer

1 that the A1C report consisted of an internet scrub of open  
2 source intelligence. What they were contracted to do would  
3 be outlined in their scope of work that we previously  
4 reviewed.

5 Q Okay. But in any case, their actual report that  
6 you feel undermines Chief Isaacson's conclusions, consisted  
7 of a quote, "internet scrub", is that correct?

8 MR. COVERT: I object. He just clarified and she's  
9 misconstruing what he said.

10 THE COURT: I'm not so sure that's correct.

11 MR. COVERT: Well, she asked if --

12 THE COURT: Overruled.

13 MS. PANTZER: Thank you, your Honor.

14 Q Do you want me to repeat the question?

15 A I think your question was their report consisted of  
16 an internet scrub?

17 Q Right.

18 A I believe it did.

19 Q Okay. And the methodology was to, quote, "identify  
20 and assess" -- and I'm reading from Paragraph 10 --  
21 "available information as it pertains to Professor Kershner  
22 and to identify social media accounts for Professor Kershner  
23 as they may be public facing avenues for threats to be  
24 directed to him and to Fredonia at large", correct?

25 A Yes.



Olivo - Cross - Pantzer

1           Q     Okay. And the part of the A1C report that you say  
2     undermines Chief Isaacson's conclusions is the part that  
3     states that there was, quote, "not an immediate or imminent  
4     threat to the Fredonia campus, staff, students or to  
5     Professor Kershner found"; is that right?

6           A     Correct.

7           Q     But Mr. Denholm's declaration rather than  
8     undermines, actually confirms everything Chief Isaacson said  
9     about the A1C evaluation, doesn't it?

10          A     Specifically which part?

11          Q     Well, we can take it item by item.

12                 Paragraph 12 of the Denholm declaration states that  
13     A1C was not retained by SUNY Fredonia to provide behavioral  
14     analysis or overall threat assessment, right?

15          A     I believe in their scope of work they were retained  
16     to conduct -- there's nothing -- there's no mention of a  
17     behavioral analysis, I would agree with that.

18          Q     Correct.

19          A     But within their scope of work there was mention of  
20     a threat assessment.

21          Q     Right but the -- the declaration states that A1C  
22     was not retained by SUNY Fredonia to provide behavioral  
23     analysis or an overall threat assessment, isn't that right?

24          A     I'm not disagreeing you with what the declaration  
25     says. What I'm disagreeing with is that in the scope of work

Olivo - Cross - Pantzer

1 that was previously presented to me, a threat assessment was  
2 in that scope of work.

3 Q The scope of work predates Richard Denholm's  
4 declaration, right?

5 A Yes, it does.

6 Q He also states in the A1C -- that the A1C report  
7 did not opine on the security environment that would exist if  
8 Professor Kershner returned to campus in the future, that's  
9 Paragraph 14, correct?

10 A Correct.

11 Q Mr. Denholm's declaration also confirms the  
12 behavioral leakage concept was at play, doesn't it?

13 A I'm sorry?

14 Q Paragraph 15.

15 A 15. That's what his declaration says.

16 Q Okay. Mr. Denholm also agrees with Chief Isaacson  
17 that if Kershner were to return to campus, there would be a  
18 high threat environment similar to what occurred in  
19 February 2022. That's Paragraph 19.

20 A I see that in his declaration.

21 Q Okay.

22 A However, I would disagree with it, and the reason  
23 being the report that was offered by A1C to SUNY Fredonia is  
24 contradictory to this. Chief Isaacson testified that A1C  
25 does not have the expertise to render that opinion. However,

Olivo - Cross - Pantzer

1 Mr. Denholm is rendering that opinion in this declaration so  
2 I think they're contradictory.

3 Q All right. But you agree with the AIC report but  
4 you don't agree with Richard Denholm's declaration --

5 A I'm saying --

6 Q -- is that the testimony?

7 A That Chief Isaacson testified that they don't have  
8 the expertise to make that conclusion.

9 Q And doesn't Richard Denholm confirm that?

10 A He's agreeing with the data that was provided to  
11 him by Chief Isaacson.

12 Q He agreed with Chief Isaacson that behavioral  
13 leakage was an issue in this case, right?

14 A Well, if he's making the conclusion on his own,  
15 then we have to assume that he has the credentials to make  
16 that conclusion. Chief Isaacson (sic) testified that he does  
17 not and only Chief Isaacson has the credentials to do that.  
18 That was his testimony. So, either Mr. Denholm has that  
19 credentials or he's agreeing with Chief Isaacson's  
20 assessment. That's my opinion.

21 Q So he agrees with Chief Isaacson's assessment?

22 A He's reiterating what Chief Isaacson had to say.

23 Q Okay.

24 **MS. PANTZER:** Can I have a moment, your Honor.

25 **THE COURT:** Sure.

Kershner v. Kolison, et al - 23-CV-525

1       **MS. PANTZER:** Thank you.

2       (WHEREUPON, there was a discussion held off the record.)

3       **MS. PANTZER:** I'm all set, your Honor.

4       **THE COURT:** You're done?

5       **MS. PANTZER:** Yes.

6       **THE COURT:** Okay. Do you want to start your redirect  
7 now?

8       **MR. COVERT:** Your Honor, if we were going to come back  
9 another day, I'd rather just do it all at once.

10       **THE COURT:** Let's do that then. We will now break for  
11 the day and can we schedule a time to come back to discuss  
12 where we're going with this.

13       **MR. COVERT:** Yes, your Honor. We certainly can -- if  
14 we're just doing a conference with the Court, then we don't  
15 need the witnesses here.

16       **THE COURT:** Yes.

17       **MR. COVERT:** We don't have to worry about their  
18 scheduling. My only major issue is I'm out of town the week  
19 of October 9th. So before or after we'll -- so next week  
20 will work for me. Then the week of October 9th, I'm out of  
21 commission. I'm out of town. And then after that, I'm  
22 available generally just between court appearances which we  
23 can always work around.

24       **THE COURT:** Okay. So let's ask the defense.

25       **MR. BOYD:** Your Honor, my schedule is generally fine

Kershner v. Kolison, et al - 23-CV-525

1 next week but I think talking internally to the client may  
2 take a little bit of time.

3 **THE COURT:** What about the end of next week? I'd like  
4 to do it before Mr. Covert leaves but I understand what  
5 you're saying, too, but I want to give you folks enough time  
6 to talk with your clients.

7 So what about the end -- you think the end of next week  
8 might work?

9 **MR. COVERT:** Your Honor, Thursday, October 5th is wide  
10 open for me. It's a week from today, I believe.

11 **MR. BOYD:** Do we want to go off the record for this?

12 **THE COURT:** Yeah, let's go off the record.

13 (**WHEREUPON,** proceedings adjourned.)  
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Kershnar v. Kolison, et al - 23-CV-525

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**CERTIFICATE OF TRANSCRIBER**

In accordance with 28, U.S.C., 753(b), I  
certify that this is a true and correct record of proceedings  
from the official audio recording of the  
proceedings held in the United States District Court  
for the Western District of New York before the  
Honorable Lawrence J. Vilardo on September 28, 2023.

S/ Diane S. Martens

Diane S. Martens  
Transcriber